

FNS Coding and Comment Analysis

**Proposed Rule on Meal Pattern Requirements and
Nutrition Standards in the
National School Lunch Program and
School Breakfast Program**

Final Summary of Public Comments

Docket FNS-2007-0038

August 4, 2011

**Prepared by
ICF Incorporated**



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Table of Acronyms and Abbreviations

ARRA	American Recovery & Reinvestment Act
CFR	Code of Federal Regulations
CRE	Coordinated Review Effort
DGA	Dietary Guidelines for Americans
DRA	Daily recommended intake
FBMP	Food-based menu planning
FDMS	Federal Docket Management System
FNS	Food and Nutrition Service
FSMC	Food service management company
HUSSC	Healthier U.S. Schools Challenge
IOM	Institute of Medicine
LEA	Local educational agency
NPRM	Notice of Proposed Rulemaking
NSLP	National School Lunch Program
NSMP	Nutrient standard menu planning
oz.	Ounce(s)
RDA	Recommended daily allowance
RIA	Regulatory Impact Analysis
RFA	Regulatory Flexibility Analysis
SA	State Agency
SBP	School Breakfast Program
SFA	School Food Authority
SMI	School Meals Initiative for Healthy Children
SNDA	USDA's School Nutrition Dietary Assessment
SY	School year
USDA	U.S. Department of Agriculture
WIC	Woman, Infants, and Children

Introduction

The U.S. Department of Agriculture Food and Nutrition Service (FNS) published a proposed rule on January 13, 2011 to obtain public comment with regard to revisions to the National School Lunch Program and School Breakfast Program meal patterns and nutrition requirements to align them with the Dietary Guidelines for Americans. The proposed changes are based on recommendations from the National Academies' Institute of Medicine set forth in the report "School Meals: Building Blocks for Healthy Children." This proposed rule would require schools to offer more fruits, vegetables and whole grains; offer only fat-free or low-fat fluid milk; reduce the sodium content of school meals substantially over time; control saturated fat and calorie levels; and minimize trans fat. Through July 1, 2011, FNS had uploaded 133,268 public submissions received on the rule into the Federal Docket Management System (FDMS) in docket number FNS-2007-0038.¹

FNS asked ICF Incorporated to analyze and summarize these public submissions. ICF's process for analyzing public comments builds upon its commercial web-based CommentWorks® software product. As a first step, ICF obtained electronic copies of the comments from FDMS, so that the comments could be imported into CommentWorks for analysis. FNS and ICF staff developed a hierarchical coding structure to include key issues identified in the rule and addressed by the commenters. ICF staff then analyzed all unique comment letters, identifying whether each submission contained substantive excerpts ("bracketing"), and using the coding structure to associate each excerpt to the issue(s) to which it applies ("coding").

ICF's review of these comment letters identified 860 unique submissions that contain particularly substantive comments, 6,247 other unique submissions, 122,715 form letters from 172 different mass mail campaigns, and 3,446 duplicate and non-germane submissions. After analyzing all of the unique submissions, ICF coded excerpts from these letters by coding structure category. ICF staff then distilled the content from the verbatim excerpt quotes into the detailed comment summaries that are included in today's document. The comment summaries that follow are organized into issue topic areas, as indicated in the table of contents.

Comment counts provided at the beginning of most sections reflect all submissions (i.e., both unique comments and the form letter campaigns received on the rule). This summary report, however, is not intended to be an exhaustive discussion of all unique comments received on the proposed rule. Rather, it attempts to capture common themes discussed by commenters and highlight particular issues detailed in some of the more substantive of comments.

In addition to the detailed comment summaries, we have provided a separate document titled the "Appendices and Letter Attributes Report", which among other items includes a table with counts of the number of submissions that address each issue.

¹ The total number of entries in the docket is closer to 66,000; however, several commenters bundled together tens of thousands of submissions into just a few of these entries (e.g., FNS-2007-0038-44533, FNS-2007-0038-17248, and FNS-2007-0038-44534). These bundled entries account for approximately 67,000 additional submissions, raising the total number of submissions received on the rule to 133,268.

1. General feedback on the notice of proposed rulemaking (NPRM)

1.1 General support for the proposed requirements in their entirety (w/o substantive rationale)

Approximately 41,595 submissions expressed general, overall support for the rule in its entirety without commenting on the specific proposed revisions to the National School Lunch Program (NSLP) and School Breakfast Program (SBP) meal pattern requirements and nutrition standards. Where these commenters provided reasons for their support, their rationale generally included one or more aspects of the following arguments:

- The proposed changes are needed to align NSLP/SBP requirements with the Dietary Guidelines for Americans (DGAs).
- Children consume up to 40 percent of their daily calories during the school day and overweight and obesity are increasing health concerns for children and adolescents. Thus, the proposed changes are critical to reducing these health concerns and the associated chronic health conditions.
- Low income students particularly need nutritious meals at school because their school meal(s) may be the one(s) they eat during the day.

These themes are explored in greater detail throughout the remainder of the summary as they apply to the support for various specific aspects of the proposed rule.

1.2 General opposition for the proposed requirements in their entirety (w/o substantive rationale)

Approximately 430 submissions expressed general opposition to the proposed rule in its entirety without commenting on the specific proposed revisions to the NSLP/SBP meal pattern requirements and nutrition standards. Where these commenters provided reasons for their opposition, their rationale generally included one or more aspects of the following arguments:

- The proposed changes would result in decreased participation in the meal programs because the food offered would not be acceptable to students. Decreased participation rates would lead to decreased revenues, which could lead some schools to stop offering meal service.
- The proposed changes would result in increased plate waste because of increased portions and the proposed requirement that a reimbursable meal must include a fruit or a vegetable.
- Increased plate waste, increased produce requirements, and increased whole grain requirements would result in increased costs for schools which exceed the 6 cent increase in reimbursement rate provided for the changes. Increased costs would result in schools having to raise meal prices, which may impact participation rates.

These themes are explored in greater detail throughout the remainder of the summary as they apply to the arguments against various specific aspects of the proposed rule.

2. Legal issues

2.1 Statutory authority/legal foundation for NSLP and SBP

A school district suggested that Congress should review the National School Lunch Act to address the original intent of the law. The commenter stated that the National School Lunch Act was originally drafted to address the problem that potential military recruits were rejected due because their growth had

been stunted due to inadequate nutrition. However, today, the commenter asserted, the leading medical reason for rejection is obesity.

2.2 Other comments on legal issues

An academic commenter claimed that the U.S. Department of Agriculture (USDA) needs to conduct another Civil Right Impact Analysis to identify disparate impacts on the basis of religion that affect participating children and families. In particular, this commenter suggested that the Agency consider the disparate impacts of the requirements on “students who belong to religions with special dietary requirements, such as Buddhism, Hinduism, Islam, Jainism, Jehovah’s Witnesses, Seventh Day Adventism, and Sikhism.” The commenter argued that the proposed rule would create religious discrimination, and stated that there could be concerns under the Religious Freedom Restoration Act of 1993 regarding religious dietary needs.

3. Need for rulemaking

3.1 Aligning school meal patterns with Dietary Guidelines for Americans and other recommendations

Approximately 400 submissions addressed aligning school meal patterns and nutrition requirements with the DGAs. Nearly all of the commenters to this section expressed support for aligning the NSLP/SBP requirements with the DGAs. The majority of commenters that supported aligning the meal programs with the DGAs, including school districts, school food service staff, a State department of education, a county public health department, advocacy organizations, trade and professional associations, nutrition professionals, food banks, a produce marketing company, a food manufacturer, industry consultants, and individual commenters, suggested that it would lead to increased consumption of fruits, vegetables, and whole-grains, thereby improving children’s health. An individual commenter asserted that the current program requirements have been inconsistent with the latest dietary science and aligning school meals with the DGAs would resolve that inconsistency. A child nutrition industry consultant urged the Agency to follow all of the Institute of Medicine (IOM) School Meals Report recommendations, and to remove any discrepancies between the proposed rule and the IOM recommendations since those differences are not science-based.

While many commenters generally supported aligning the NSLP/SBP requirements with the DGAs, some suggested that the Agency should use the 2010 version of the DGAs rather than 2005. In particular, these commenters stated it was important to use the 2010 version because it recommends new limits on sodium and saturated fat consumption, and is focused on promoting healthy eating patterns rather than setting requirements for specific foods.

An advocacy organization suggested that the Agency follow the Health and Sustainability Guidelines for Federal Concessions and Vending Operations,” which follow the 2010 DGAs but also represent best practices for reducing environmental impacts and making more sustainable choices. Another advocacy organization stated that the proposed changes to the nutrition standards are mostly consistent with the American Cancer Society’s Guidelines on Nutrition and Physical Activity for Cancer Prevention.

3.2 Changes in nutrition science

Approximately four submissions discussed various changes in nutrition science and the implications of these changes for the NSLP/SBP revisions. An individual commenter stated that they prefer the daily recommended intake (DRI) over the recommended daily allowance (RDA) platform and that these program revisions are long overdue.

A healthcare professional claimed that the new nutrition standards would help address the national childhood obesity problem because they would now be based on the latest dietary science. An individual commenter added that the current nutrition standards have been inconsistent with the latest dietary science, unlike the proposed changes which are aligned with the 2005 DGAs.

Finally, a policy advocacy organization described the strides made in the fields of dietary science and childhood nutrition, and claimed that those strides demonstrate the importance of fruits and vegetables and the benefits of plant-based diets with limited or no consumption of meat.

3.3 Health concerns affecting children and adolescents

Approximately 26,640 submissions addressed the need for the rulemaking due to the health concerns affecting children and adolescents. Nearly all of the commenters, including health care associations, food banks, advocacy organizations, school districts, trade associations, food manufacturers, school food service staff, a superintendent, professional associations, a State department of health, two county public health departments, community organizations, a nutrition professional, and individual commenters, discussed the need for these changes to help address the national childhood obesity problem. The commenters claimed that it is imperative that the program be aligned with the DGAs, which would increase the availability of fruits, vegetables, and whole-grain in school lunches, while lowering calorie, fat, and sodium content. Additionally, most commenters also suggested that the changes would help teach children at a young age to practice healthy eating habits that they can carry on for the rest of their lives and pass on to their children.

Several other commenters also noted the additional health complications obesity potentially creates for overweight youth, including increased likelihood of preventable diseases like cardiovascular disease, high blood pressure, high cholesterol, stroke, and Type 2 diabetes, all of which greatly increase the cost of healthcare nationally. However, several commenters also stated that these proposed changes to the NSLP and SBP alone will not remedy the national childhood obesity epidemic, and that children and parents need to be educated on healthy food choices and the health benefits of exercise.

A food bank and an advocacy organization commented that updating the NSLP/SBP program requirements is important because in low-income areas, these meals may be the only healthy nutrition the children receive throughout the day. An individual commenter stated that poor children are more likely to be overweight than other children, and urged the Agency to address the link between poverty and childhood obesity. An advocacy organization argued that poverty, hunger, and obesity are linked and that creating a nutritionally balanced school meal program is an opportunity to address all three issues at once. Several commenters argued that to support overall good health among children, low-income children in particular, that the programs must ensure access to sufficient energy from nutrient dense foods, ensuring adequate caloric intake to support growth and development.

A trade association commented that reducing childhood obesity has a direct impact on student performance and teasing in school. An individual commenter argued that being overweight extends beyond health concerns and includes social justice issues as well. This commenter referenced studies demonstrating that overweight individuals are subject to bias, teasing, and discrimination. Another commenter cautioned against certain approaches to addressing childhood obesity in schools, arguing that when foods are overly controlled and restricted, the result is keen interest, desire, and sneaking.

3.4 Current school meals

Approximately 40 submissions addressed current school meals as they relate to the need for the rulemaking to update NSLP/SBP meal pattern requirements and nutrition standards. A professional association and individual commenters stated that the proposed changes are needed because the food and nutrition currently in cafeterias around the national fall short of where they need to be. An advocacy organization discussed a large-scale study about school district policies and school practices relevant to childhood obesity, which focused partly on school meals. The commenter asserted that the study findings indicate a clear need to improve the nutritional quality of school meals. An individual commenter stated that even though many school programs have begun taking action to provide healthier food options to students, most states have weak standards or none at all when it comes to unhealthy foods.

However, other commenters claimed that the current school programs are adequate. School food service staff members and a school district commented that school meal programs have already been implementing many of the proposed requirements. A school district claimed that the majority of schools meet the food component requirements of the current menu planning regulations and suggested that the issue is not really what the schools serve, but instead what the children take. It added that what the children take does not necessarily reflect what they eat. An individual commenter suggested that their local food service employees have a better understanding of what is healthy and would be eaten by the children rather than a bureaucrat in Washington, D.C.

3.5 Alternatives to revising requirements (e.g., voluntary guidelines)

Approximately 20 submissions discussed alternatives to revising the NSLP/SBP meal pattern requirements and nutrition standards. A school district, a school food service staff member, and an individual commenter argued that simply mandating larger portions of healthier foods would not make a difference if children will still not eat them. A school district suggested that the Agency implement a general guideline of 30 percent of calories from fat, 10 percent of calories from saturated fat, which would give them freedom within the guidelines to provide meals that their students will eat. An individual commenter suggested that expanding the Fresh Fruit and Vegetable Program to provide opportunities for students to try healthy foods would be a better approach for improving children's health than the proposed regulations. Other commenters recommended that FNS find ways to ensure that the current standards are being met, instead of revising them to make them more stringent. Finally, a school food service staff member claimed that educating parents and students is key to seeing positive results in healthier food choices.

3.6 Need for additional research/studies or to conduct a pilot project to test proposal

Approximately 28,325 submissions addressed the need for the Food and Nutrition Service (FNS) to conduct additional research or studies. The majority of commenters who discussed the need for additional studies requested that FNS pilot the proposed changes to the NSLP/SBP before implementing the proposal. Many of these commenters, which include school districts, school food service staff, school advocacy organizations, nutrition professionals, consultants, professional associations, policy advocacy organizations, farms, food manufacturers, software companies, school superintendents, and individual commenters, reasoned that a pilot is necessary to assess the impact on the program, student acceptability, and whether the changes meet the stated objectives. Generally, commenters requested that FNS implement a pilot program before promulgating a final rule, based on their assertion that the costs of investing in the proposed changes are very large. A number of school districts are concerned that the changes would cause a significant drop in participation and, thus, revenue for the program.

Several commenters suggested a pilot study to analyze the impact of the proposed changes on plate waste. Other commenters recommended the program be tested prior to implementing the rule to examine the impact it would have on student participation. Some commenters urged a pilot program to get a better idea of what the actual costs of the proposed changes would be. One school district suggested that a pilot

program prior to implementation should also examine product availability and staff understanding of the proposed changes. Several commenters, including a school district, school food service staff members, and an individual commenter, suggested that a pilot program was necessary to see if the proposed changes would meet the objective of reducing childhood obesity since schools only provide a minimal portion of the child's actual annual calories.

Several commenters recommended additional studies or research relating to the proposal. The topics of these suggested studies included school participation, the effect of the proposed offer versus serve provisions on actual consumption, seasonal product procurement, vegetarian diets, and the evaluation of how the new meal requirements would change children's dietary intake, student participation, plate waste, and cost.

3.7 Other issues related to the need to revise NSLP/SBP meal and nutrition requirements

Approximately 60 submissions offered additional comments regarding the overall need to revise the nutrition requirements. Several commenters, including school food service staff, individual commenters, professional associations, and policy advocacy organizations asserted that, in addition to revising the NSLP/SBP meal pattern requirements and nutrition standards, additional efforts, such as educating parents, training staff, promotional efforts, collaboration with the food industry, and research will be needed in order to successfully increase the overall health of children. Other commenters asserted that for many students, school meals are the healthiest and most balanced meal they get all day.

4. Menu planning approaches

4.1 Comments in support of proposal to allow only one food-based menu planning approach

Approximately 175 submissions expressed support for the proposal to allow only one food-based menu planning approach, including school food service staff, school districts, food banks, advocacy organizations, trade associations, State departments of education, professional associations, food manufacturers, community organizations, health care associations, academics, nutrition professionals, and individual commenters. Many commenters claimed that food-based menu planning (FBMP) would simplify menu planning. An individual commenter added that this approach allows for creativity in menu planning. Additional commenters added that this approach could serve as a model for schools creating appropriate portion sizes and calorie levels for their meals, and could be used as a teaching tool to help children learn to choose a healthy balance of food items. Other commenters, including advocacy organizations and a food bank, stated that a food-based menu planning approach would ensure student access to healthy foods in key food groups, would prove an easy tool for planning meals, and would simplify program management, training, and monitoring by State Agencies.

A few commenters, including a school district, school food service staff, and a State Agency director for child nutrition programs, supported using food groups as opposed to nutrient standards, claiming it is more practical and is easier to understand by the parents and students. Similarly, a food manufacturer stated that FBMP is preferable over nutrient standard menu planning (NSMP) because it inherently advances the goal that children recognize all the food group components in their meals to conceptualize the meaning of a balanced meal, whereas NSMP can result in a meal that meets certain nutritional targets, but is not recognizable by all the food groups. An advocacy organization added that it would make it easier to communicate the improvements to school meals with school administrators and staff, parents and caregivers, and the community-at-large.

Two advocacy organizations suggested that a FBMP approach would allow schools to emphasize whole foods rather than highly fortified foods, which would result in promoting positive eating habits now and in the future. A trade association claimed that this approach reinforces the concepts of energy balance, portion control, and a total diet approach to eating.

A school advocacy organization expressed support for FBMP, but voiced concern that school districts would need to conduct a nutrient analysis to maintain compliance with nutrient targets. This commenter urged the Agency to evaluate and provide the best available tools to integrate the food-based menu system with nutrient analysis.

4.2 Other menu planning approaches should be permitted

Approximately 650 submissions addressed other menu planning approaches that should be permitted. Nearly all of the commenters to this section, including a Federal elected official, school food service staff, teachers, school districts, schools, school advocacy organizations, food service industry companies, trade associations, professional associations, food manufacturers, farmers, a State department of education, academics, nutrition professionals, and individual commenters, suggested that NSMP should be permitted as an option for meal planning under the proposed rule.

The commenters provided various reasons for inclusion of the NSMP as an option. Several commenters claimed that the costs of changing to the FBMP would be too high due to increased administrative and training costs, technology needs, etc. School food service staff and a school added that the change would cost more money due to more food being thrown away under FBMP. They claimed that by using the NSMP, portion sizes can easily be changed to reflect age groups, thereby controlling food costs. Another commenter asserted that FBMP would limit locally grown produce purchases because it requires purchasing uniform fruits in non-irregular sizes.

Other commenters, including school food service staff members and a school, asserted that their districts have been using NSMP for years, that are comfortable using it and it provides flexibility. These commenters argued that switching plans would increase the time required to plan menus and limit flexibility. A school and a school food service staff member also claimed that the switch would also burden cashiers since they would have to learn the components of each food item in order to identify a reimbursable meal. Many commenters noted that they would still be required to do a nutrient analysis for their diabetic students and for compliance purposes.

Several commenters also stated that by using the NSMP, they are able to provide a wider variety of nutritious meals, and that they would be severely limited in menu variety should they be required to use the FBMP, which could lead to decreased student acceptance and participation. A few commenters, including school food service staff and an individual commenter, added that by using the NSMP, they are certain students are receiving the nutrition they need, but with the FBMP they would only hope they are. Another commenter asked why FNS is limiting School Food Authorities (SFAs) to FBMP when nutrients/calories are the key factors to assess a meal.

Some commenters expressed concern over the complexity of the proposed menu planning change. They noted that most schools plan menus by the day and suggested that shifting to a weekly meal pattern to accommodate the vegetable subgroups would be unduly complex. A school district stated that defining the menu structure each day eliminates the flexibility of developing popular, appealing, cost effective menu options. Finally, a food manufacturer voiced concern over implementing a FBMP approach because it limits the number of products that can be produced for the school meal programs, which decreases the amount of commodity credit claimed, and similarly reduces the discount that can be given to the schools.

Numerous commenters provided recommendations for other menu planning approaches to be considered. Generally, some commenters, including school districts and a school food service staff member, stated that their districts should be permitted to operate a menu planning method of their choosing as long as they remain compliant with the requirements. Other commenters requested flexibility to use the method that works best for their district. A school district stated that without this flexibility, many popular food items would have to be removed from the menus. Finally, a school district and a nutrition professional

stated that they use the NSMP to provide options for students, which is particularly helpful for their vegetarian students.

Many commenters asked for a waiver to be able to continue to use the NSMP approach. A few commenters, including school districts, a professional association, and an individual commenter, added that the waiver should include specific targets that must be met for dietary fiber, sodium and vegetable subgroups. A school district and school food service staff requested waivers for programs successfully operating NuMenu programs.

Several commenters suggested that the California Shaping Health as Partners in Education (SHAPE) should be permitted as it is more flexible in menu planning and has a high student acceptance rate. Other commenters suggested that the meal pattern should be similar to the Healthier U.S. Schools Challenge (HUSSC) requirements. A school food service staff member added that the HUSSC is regarded as the best pattern for school meals. Additionally, a few commenters suggested that rather than adopting one menu planning approach, FNS should add Enhanced Menu Planning back as an option.

4.3 Other comments on menu planning approaches

Approximately 610 submissions addressed menu planning approaches in a way not already addressed above. A State department of education asked whether a definition of an entrée would be required under the food-based approach. A school district suggested that the meal pattern tables should be modified to indicate servings rather than cups. A school district asked the Agency to make the menu plan either daily or weekly requirements, but not both. A school food service staff member asked for clarification regarding the treatment of condiments under the proposed food-based meal pattern approach. School food service staff and a food service industry company expressed concern over the timeframe for making the change to a FBMP approach, noting that many staff would need to be trained and students would require nutrition education and time to adjust their tastes. A school district asked how the recommended FBMP approach would verify that specific calories and other target nutrients were met, and whether the districts would be required to analyze the food-based approach menus.

An advocacy organization emphasized the importance of USDA assisting schools in identifying and using culturally appropriate foods in school menus. Two individual commenters suggested that menus should be based on entrée, sides, beverages, and condiments for traditional breakfast service because this approach would assist in meeting healthy eating patterns goals as well as satisfy ethnically diverse menu options, and would be easier to train staff to identify and verify a reimbursable meal.

5. Age/grade groups of children

5.1 Comments in support of proposed age/grade groups

Approximately 30 submissions expressed support for the proposed age/grade groups discussed in the NPRM, including school districts, professional associations, a food bank, trade associations, advocacy organizations, healthcare associations, nutrition professionals, and individual commenters. Many commenters supported the proposed age/grade groups because they follow the common grade distribution of schools, but are also consistent with the DRI age groupings. An individual commenter stated that aligning the grade levels to reflect today's school grade configurations would greatly assist menu planners. A food bank asserted that the proposed age/grade groups would simplify training and implementation at the local and state levels. A school district commented that the proposed age/grade groups would eliminate the need for school districts to complete three different analyses for School Meals Initiative (SMI) review in a Pre-K – 5 school, which they currently are required to do. A nutrition professional agreed with the proposed provision that would allow schools to use a K-8 grade configuration for providing meals so long as the nutrition requirements were met for each age/grade group, which is particularly important in the SBP since students generally come directly to the cafeteria in no grade order.

5.2 Concern about proposed age/grade groups

5.2.1 Different age/grade groupings (or an additional age/grade grouping) would be more appropriate

Approximately 360 submissions suggested different age/grade groupings from those proposed or suggested permitting an additional age/grade grouping. Several commenters recommended that the rule provide flexibility to districts to group grades together as needed and to have a formula to provide them with a calorie range. A school district discussed the difficulty in having three grade configurations along with minimum and maximum calorie and micronutrient requirements, and suggested simplifying the grade configurations and allowing minimum levels requirements instead. A large metropolitan school district urged the Agency to eliminate age/grade group requirements from the rule. An individual commenter stated that each age/grade group is different in the manner in which they are developing and growing, thus the groupings should reflect those differences.

Several commenters recommended splitting the age/grade group K-5 into 2 separate groups, K-1 and 2-5, to account for the different intake limits of children within the K-5 group. These commenters claimed there would be too much food for the young children in this grade group. A few commenters, including State departments of education, suggested allowing districts to offer students in grades K-3 a smaller portion. A school district and an individual commenter suggested that the grade groupings be set at K-3, 4-8, and 9-12 because portions may exceed what a child can eat under the proposed age/grade groupings. A school food service staff member suggested that the grade groupings be set at K-5 and 6-12 or 7-12.

A State department of education suggested that the Agency retain the current groupings, but permit the option to expand any grade group up or down by one grade level. Two individual commenters suggested allowing a variance of 1-2 grade levels beyond the proposed groupings. A few commenters, including a school district, a food manufacturer, and an individual commenter, claimed that the proposed groupings would be a challenge for schools that have overlapping grades that are served their meals at the same time. A school district commented that by having to create 2-3 different menus per school to meet the different calorie ranges, some programs would be incurring a major cost burden from food and labor costs. A school food service staff member suggested that the grade level caloric levels need to overlap not only between 6-7, but also for 8-9 where 9th grade students are in middle school to avoid an undue workload on site managers that would be required to fill out 2 production records per line per lunch period.

A school district also noted the difficulty schools that separate students by age rather than grade level would have in meeting the proposed grouping requirements. A school argued that a junior/senior high school would face several issues in meeting the grouping requirements. It would be required to change its grade group from 7-12 into 2 categories of grades 6-8 and 9-12 and there would be ramifications of meeting the different servings and sizes requirements of the groupings.

5.2.2 NSLP and SBP should have different sets of age/grade groups

No submissions expressed this view.

5.2.3 Concerns regarding administration of the SBP for different age/grade groups

Approximately 30 submissions expressed concerns with the proposed age/grade groups in terms of how they would affect administration of the SBP. An individual commenter expressed concern over “grab and go” stations serving breakfast. This commenter stated that the regulations were lax in schools that serve K-12 students in the same line. It recommended the Agency require that if a school provides breakfast for such a wide range of students, that breakfast must be served in the classroom to ensure standards are met. A food service industry company and another commenter requested that the Agency allow breakfast to have a single meal pattern requirement regardless of age to ensure that delivery challenges do not cause

these programs to cease operations. The food service industry company suggested that the Grade 6-8 meal pattern would be the most logical choice.

A school district expressed concern for California districts with K-6 or K-8 schools regarding the caloric and sodium ranges. The commenter stated that districts that use manufactured products do not have the ability to modify their recipes to adjust for these lower amounts, causing schools to over-feed younger students and under-feed older students. A school district and a school food service staff member commented that it is difficult for the cashier to determine what constitutes a reimbursable meal at schools with grade levels outside the K-5 configuration. Another commenter requested that USDA consider alternative options for K-8 requirements, such as increased time to meet mandates.

5.2.4 Other concerns about proposed age/grade groups

Approximately 40 submissions expressed concerns about the proposed age/grade groups that did not fall into one of the other categories discussed above. An individual commenter discussed how differing socio-economic classes of children belonging to the same grouping could lead to vastly different nutrition requirements, suggesting that this issue may call for a more localized meal planning approach tailored to student health. An academic commenter recommended a transition phase for high school students, allowing an exemption from the requirement to select the fruit and vegetable component at meals. This commenter claimed that high school students are making choices everyday on their own and any prescribed requirements would not have the desired outcome of encouraging increased consumption of these foods. Another commenter stated that since the overlap between K-5 and 6-8 calorie ranges is only 50 calories, the part of the proposal that allows schools to offer students in grades K-5 and 6-8 the same food quantities at lunch is rather narrow.

5.3 Other alternatives/suggestions on age/grade groups

No substantive comments addressed this section.

6. Proposed meal pattern changes

6.1 Fruits and vegetables separated into two separate food components of the meal pattern

6.1.1 Support

Approximately 80 submissions expressed support for separating fruits and vegetables into two different required food components in the meal pattern. Some commenters, including an advocacy organization, a farm, and trade associations, provided data and statistics demonstrating that children are not getting enough of these foods. A trade association commented the requirement to serve both a fruit and a vegetable would align school meals with the DGAs and help children increase their overall fruit and vegetable intake. A State department of agriculture stated that by separating fruits and vegetables into distinct categories, SFAs would be better able to educate students about healthy meal patterns. An individual commenter supported separation of the fruit and vegetable component as a way to encourage vegetable choice. An advocacy organization expressed general support for this requirement and claimed that schools would be able to meet new requirements as many schools already exceed these requirements under the current programs.

6.1.2 Oppose

Approximately 35 submissions expressed opposition to the proposed separation of the current fruit/vegetable component into two separate components. The majority of the commenters claimed that it was too much food, and creates additional unnecessary costs and wastes. A school food service staff member commented that nutrition education needs to take place before mandating this requirement. A few commenters, including a school district, a school food service staff member, and an individual commenter, stated that students should be allowed to take a combination of fruits and/or vegetables equal to a required serving. A school district and a school food service staff member claimed that separating

fruits and vegetables into two separate components would give directors less flexibility to plan menus that students would like. An individual commenter suggested that schools present fruits and vegetables as they are in the Fresh Fruit and Vegetable Program, allowing them to offer those foods to students when they are hungry and in amounts they are able to consume. A school food service staff member argued that self-serve salad bars will be complicated by the proposed fruit and vegetable requirements as separate components and recommended that combining the fruit and vegetable components would better allow for students to meet the serving size.

6.1.3 Other comments on separating fruit/vegetable component

Approximately nine submissions discussed the proposed separation of the fruit/vegetable component into two different meal components, but did not express clear support or opposition. A school district expressed concerns with field trip sack lunches being able to meet this requirement. A school food service staff member commented that the separation of fruits and vegetables into separate components would be a challenge for self-selection areas (salad bars, side bars).

6.2 Fruit meal component

6.2.1 General support

Approximately 27,900 submissions expressed general support for the proposed fruit component without commenting on the specifics of the component requirements. As noted in Sections 6.2.3 and 6.2.4, many commenters generally supported the increases in fruit requirements for breakfast and lunch.

6.2.2 General opposition

Approximately 1,990 submissions expressed general opposition for the proposed fruit component without commenting on the specifics of the component requirements. Several commenters, including a State department of education expressed concern about the availability of produce in rural areas in certain seasons. A school food service staff member mentioned that changes in produce availability could affect a school's ability to meet the daily requirements. Several commenters suggested that changes in requirements should be implemented gradually and that it is important to provide students with choices. A trade association did not think the amounts of fruit proposed would provide the best nutritional option. A school district objected to the rule's implication that some fruits and vegetables are "bad."

6.2.3 Proposed breakfast daily/weekly requirements for fruit

Approximately 135 submissions supported the proposed increases in daily and weekly requirements for fruit at breakfast. Commenters suggested that the provision would help students increase their overall consumption of fruit and improve eating habits. A professional association expressed the view that the increase was part of a landmark improvement in the school meal programs. Several commenters, including a State department of health, advocacy organizations, a trade association, and a farm entity, also noted that the provision would help align school breakfasts with the DGAs.

Approximately 1,100 submissions opposed the proposed increases in daily and weekly requirements for fruit at breakfast. Generally, commenters opposed this part of the proposal because they argued it would require unreasonable amounts of food, increase plate waste, and increase costs for food, labor, equipment, and storage. An advocacy organization added that cost pressures may develop for school food providers. A school district commented that school districts would have to change their standard operating procedures. Some commenters warned that the provision could lead to school districts eliminating the SBP entirely. Commenters also emphasized that students may have very little time (e.g., 10 or 15 minutes) to eat breakfast at school, and as one individual commenter observed, "Watch a 6 year old try to eat one cup of fruit. It takes about 20 minutes." Several commenters cautioned about resistance from students, and advised that schools should offer choices that students can select. As one school food service staff member argued, "Small children often cry if they are forced to put food they do not want on their trays."

Several commenters, including a school food service staff member and individual commenters, recommended that the change in portion sizes should be age/grade appropriate. Other commenters expressed concern about the additional calories. School districts, school food service staff, and a State council on food policy argued that one cup of fresh fruit is not practical, so the provision would discourage the use of fresh fruit. A State department of education pointed out that the IOM recommends 21.5 percent of daily nutrient requirements for breakfast, and 21.5 percent would correspond to a breakfast fruit serving of ½ cup for all grades. A school district and a nutrition professional warned that schools are likely to serve more juice to help contain costs and that this may lead to a decline in milk consumption. Several commenters suggested that students should be allowed to take their breakfast fruit with them. Some commenters urged delaying implementation of the fruit component until additional funds can be allocated.

6.2.4 Proposed lunch daily/weekly requirements for fruit

Approximately 100 submissions expressed support for the proposed daily and weekly requirements for fruit at lunch. A few commenters, including a policy advocacy organization, a trade association, and a farm entity, again mentioned that the increase in fruit would be consistent with the DGAs. A professional association suggested that additional fruit consumption could promote the development of a lifelong habit of healthy eating. A nutrition professional and a school food service staff member supported a requirement for fruit at lunch but did not mention the increases proposed. One of them also recommended disallowance of juice at lunch.

Approximately 290 submissions opposed the lunch fruit requirements, arguing that they were too large. Many commenters expressed concern about higher costs, insufficient time to eat the food, and increased plate waste. A religious organization commented that the costs include not only the cost of food, but also labor costs to prepare, serve, document, and clean up the additional items. An individual commenter warned that schools would have to increase lunch prices, which would lead to a decrease in participation. One school food service staff member observed that young children need time to chew their food. Another school food service staff member suggested that additional food is counterproductive to childhood obesity initiatives geared toward lowering the amount of calories.

A few commenters, including a school district and individual commenters, recommended that the final rule should encourage, but not mandate, larger portions. A school district suggested that portion sizes should be standardized to a maximum of ½ cup. A school food service staff member proposed an option of having less fruit at breakfast and more at lunch. Several commenters expressed concern that most fresh fruits do not equal a one cup serving and suggested that the rule should specify a “serving” rather than a “cup” for fresh fruit.

6.2.5 No more than half of the fruit offerings may be in the form of juice

Approximately 65 submissions expressed support for the proposal to permit no more than half of the fruit offerings to be in the form of juice. Several commenters, primarily advocacy organizations, suggested that the provision would increase the variety of fruits served and help address expert recommendations to reduce fruit juice intake by children. An advocacy organization and a trade association added that the American Academy of Pediatrics recommends that children limit juice intake to one or two servings a day. Some commenters, including a State department of health, a nutrition professional, a school food service staff member, and a food service industry company, supported limiting fruit juices but did not specify how much juice should be allowed to substitute for fruit.

Approximately 30 submissions opposed the proposal to permit no more than half of the fruit offerings to be in the form of juice. Some commenters argued that the requirement should be more restrictive, while others argued that the requirement should be less restrictive. Several commenters favored limiting the substitution of juice for fruit to once or twice a week, for example, or limiting the substitution to only one-third of the daily fruit requirement. Commenters pointed out that juice has fewer nutritional benefits

than whole fruit and may have high levels of sugar and more calories. One individual commenter even recommended banning fruit juices entirely by 2015. A State department of agriculture commented that not allowing more than half the required fruit serving to be met with juice could result in the addition of another food item, which could result in waste. A school district and school food service staff, however, argued that if juice is the students' preferred form of fruit, then having juice more than once a day should be acceptable, especially given the increased amounts food required at breakfast and the limited time to eat it. Another school district favored allowing substitution of juice for more than half of a serving of fruit.

Several commenters recommended that at lunch, just as at breakfast, half of fruit offered per week may be 100 percent vegetable juice or fruit juice, in 4-ounce servings. A school district asked if a school could provide an 8-ounce serving of juice at breakfast if it did not serve juice at lunch. A trade association and an academic commenter did not mention limits, but supported the option of counting juice toward the fruit and vegetable requirements. A school district asked if the requirement for high school students could be met with $\frac{1}{2}$ cup whole fruit or $\frac{1}{2}$ cup fruit juice. An advocacy organization suggested that schools should be instructed on the type of fruit juice to serve, including nutrient guidelines. A food manufacturer recommended that the final rule address fruit and vegetable juice blends and allow them to contribute toward both the fruit and vegetable requirements. A school food service staff member expressed concern that there may be unintended consequences in offering juice daily due to the possibility that students might consume the juice instead of milk.

6.2.6 Fruit component offerings that are in the form of juice must be 100 percent juice

Approximately 120 submissions expressed support for the proposed requirement for 100 percent juice, and as described in Section 6.2.5, several submissions recommended that half of fruit offered per week may be 100 percent vegetable juice or fruit juice, in 4-ounce servings. Two individual commenters asked that 100 percent juice remain as one of the breakfast servings. A professional association stressed that the juice should be unsweetened.

Approximately four submissions opposed the proposed requirement for 100 percent juice. An individual commenter recommended that 100 percent fruit juice should be eliminated. An academic commenter argued that 100 percent juice is preferable to fruit cocktails and sugar-loaded drinks, but juice does not provide the fiber contained in whole fruit.

A few commenters, including a school district and individual commenters, asked whether the provision includes pear and apple/pear juice. An individual commenter recommended the elimination of all juices, including 100 percent fruit juice.

6.2.7 At breakfast, only non-starchy vegetables may be offered in place of fruits

Approximately 15 submissions expressed support for allowing non-starchy vegetables to satisfy the requirement for the fruit component at breakfast. A few commenters, including a nutrition professional, a professional association, and a trade association, specifically opposed allowing starchy vegetables at breakfast.

Over 320 submissions, however, opposed this part of the proposal, and nearly all of them favored allowing starchy vegetables, particularly potatoes, to be included in place of fruit at breakfast. These commenters argued that the rule should encourage more choices, not fewer. Many expressed concern that this provision would unfairly stigmatize one small group of vegetables. Some suggested that limited amounts of starchy vegetables, such as one cup per week, should be allowed at breakfast.

Commenters made several arguments to support the use of potatoes. These commenters stated that potatoes contain key ingredients like potassium and other minerals, vitamins, and fiber, and they are naturally low in fat and sodium. Further, commenters asserted that potatoes are popular with students, so there would be less plate waste and greater participation when potatoes are served. If the type of

preparation is a concern, commenters argued that most potatoes are mashed or baked because frying is no longer used at most schools. Commenters stated that potatoes are inexpensive and easy to store, and they may support local farms. In some menus, commenters argued, potatoes can complement other vegetables. Some commenters added that corn is also nutrient-rich, inexpensive, and popular with students.

In a typical comment urging allowing potatoes at breakfast, a trade association pointed out that disallowing starchy vegetables in place of fruit at breakfast would reduce the ability of schools to provide key nutrients at a manageable cost. A few commenters, including trade associations and other food industry companies, claimed that the provision was not consistent with the 2010 DGAs. Several commenters noted that starchy vegetables often go hand-in-hand with the additional protein required at breakfast. Others pointed out that regional and cultural preferences often include potatoes at breakfast. An advocacy organization observed that popular breakfast items, like burritos, frequently include starchy vegetables. One school food service staff member commented that limiting starchy vegetables at breakfast to one cup per week would be acceptable.

Two commenters thought allowing vegetables to substitute for fruit would provide limited benefits, and a State department of education noted that adding peppers and tomatoes to an omelet would only satisfy a small portion of the requirement for a cup of fruit at breakfast. A school district and an individual commenter asked for clarification about whether a starchy vegetable could be served at lunch if one was served at breakfast that same day. One school food service staff member asked whether sweet potatoes are considered starchy vegetables.

6.2.8 Other comments on fruit component requirements

Approximately 575 submissions addressed the proposed fruit component requirements in ways that did not fit into the other fruit component issue categories above. Several commenters supported the use of fruit in all forms – fresh, frozen without sugar, dried, or canned in fruit juice, water, or light syrup – as outlined in the proposal. Several other commenters specifically agreed with limiting added sugar in fruits. A large number of commenters, however, argued that frozen fruit with sugar should be allowed. They pointed out that sugar enhances flavor and texture and may act as a preservative, and sugar added to frozen fruit should not be singled out for prohibition.

Several commenters recommended not allowing canned fruit in light syrup because of the added sugar content. Several commenters encouraged the use of fresh fruit, but other commenters argued that canned, frozen, and dried fruits are nutritionally comparable to fresh fruit. Some commenters encouraged counting fruit in items such as crisps and cobblers toward the fruit requirement. Other commenters disagreed with allowing schools to count jello, fruit juice bars, fruit juice or sherbet as fruit, and requested guidelines for what counts as a fruit serving. A trade association suggested that schools need flexibility to meet part of the fruit requirement with fruit bars and yogurt bars. An individual commenter requested an allowance for crushed fruit in products, especially at breakfast, to meet the fruit requirements. A State department of education and an academic commenter warned that changes to the fruit component may conflict with prescribed diet plans for children with diabetes.

6.3 Vegetable meal component

6.3.1 General support

Approximately 47,880 submissions generally agreed with the proposed vegetable component without commenting on the specifics of the component requirements, particularly increasing the amount and variety of vegetables served.

6.3.2 General opposition

Approximately 65 submissions expressed general opposition for the proposed vegetable component without commenting on the specifics of the component requirements. Generally, these commenters

suggested that the increases in serving size, limits on students' favorite vegetables, and mandated minimums for vegetable subgroups would increase food cost and plate waste.

6.3.3 Proposed lunch daily/weekly requirements for vegetables

Approximately 80 submissions supported the proposed increases in the amounts of vegetables served because the requirements would help students increase their overall vegetable consumption and improve their eating habits. One school district favored increasing the requirements to 1 cup per day for all age groups.

Approximately 180 submissions, however, suggested that the larger servings and limited time to eat would increase plate waste rather than increase consumption. In addition, costs would increase substantially. One individual commenter observed that many schools do not have the ability to cook or to hold vegetables that would be appetizing or maintain nutrient content. Other commenters, including school food service staff, recommended that it would be better to offer more vegetable choices, not larger serving sizes.

6.3.4 Vegetable subgroups

6.3.4.1 Must have at least one weekly serving (1/2 cup) of each vegetable subgroup (dark green vegetables, orange vegetables, legumes)

Approximately 26,650 submissions expressed support for the vegetable subgroups. Commenters generally agreed that requiring minimum weekly servings of vegetable subgroups would improve the variety of vegetables offered and consumed and that the subgroups provide a good source of nutrients. A professional association added, "The proposed new vegetable subgroups represent an important step forward for the Agency and would allow for easier meal planning and compliance for school food service employees." An advocacy organization suggested that the different vegetables can help correct imbalances in current school diets.

Approximately 75 submissions commented that the minimum weekly serving of subgroups should be greater. A State department of community health expressed the view that the minimum weekly serving suggestions should be greater. An advocacy organization commented that schools should be encouraged to exceed the minimum amounts.

Over 130 submissions suggested that the minimum weekly vegetable subgroup requirements should be less. Many of them pointed out that students would reject vegetables that they do not know or like, and student preferences often reflect cultural or regional preferences. In addition, these commenters argued that menu variety would be limited because of minimum weekly vegetable subgroup requirements. Several commenters expressed concern about the price and availability of the vegetables within the subgroups, depending on factors such as weather. Several other commenters asserted that requiring more legumes would be especially burdensome, given student preferences.

Approximately 500 submissions had other comments about the vegetable subgroups that did not clearly state support or opposition for the proposed minimum weekly requirements. Because of the problems with the required minimums, a significant number of these commenters favored encouraging rather than prescribing the use of the vegetable subgroups. Several commenters argued that weekly planning to accommodate the subgroups would be unduly complex. A religious organization and a school food service staff member commented that requiring specific vegetable subgroups is restrictive because it does not take into account multicultural diversity of student likes and dislikes. A State department of education and a school district asked whether sweet potatoes would be considered an orange vegetable. Two school food service staff members suggested that if a school is meeting its vitamin A and C requirements, it is most likely meeting its orange/red vegetable requirements. An individual commenter stated that new foods should be paired with familiar ones to increase student acceptance.

6.3.4.2 One cup maximum starchy vegetables (e.g., corn, green peas, white potatoes) per week

Approximately 73,950 submissions supported the proposed weekly limit on starchy vegetables. Several of these commenters provided reasons for their support, including potential improvement in the variety of vegetables offered and consumed, encouragement for students to try new types of vegetables, and reducing the consumption of french fries.

Approximately 4,170 submissions opposed the starchy vegetable weekly maximum limit and thought it should be less restrictive. Many of these commenters made the same arguments commenters made when opposing the prohibition of starchy vegetables for breakfast (Section 6.2.7 above), including the benefits of serving potatoes. These commenters pointed out that starchy vegetables, such as potatoes and corn, are the vegetables students like the most, and eating some kind of vegetable is better than eating none at all. Commenters stated that if starchy foods are limited as proposed, then a school would not be able to offer, for example, mashed potatoes, baked french fries, and corn in the same week, which would be unrealistic. Many commenters also argued that schools should have more flexibility to decide how to maximize the consumption of a variety of vegetables to meet nutritional goals. As one typical school district comment stated, "It seems counterproductive to remove from consideration and usage a valuable low cost, nutritious food."

Many commenters suggested that if fried potatoes are the concern, then they should be addressed separately, as described in Section 6.3.5 below. Other commenters warned that with the weekly limitation in place schools would choose to offer potatoes each week, and then students would be deprived of the nutritional benefits of green peas, corn, and lima beans. One individual commenter stated that the 2010 DGAs encourage "eating a variety of vegetables ... especially ... peas." Some commenters recommended that limits should only be placed on white potatoes, and not other starch vegetables such as corn, lima beans, and green peas. However, other commenters emphasized the nutritional value of baked, roasted, or boiled white potatoes. Commenters also cited a research finding that potatoes as part of a school lunch do not displace other vegetables.

Commenters noted a number of other potential consequences of the proposed provision. Several commenters warned that the proposed weekly limit would have a negative impact on participation in the school lunch program. As one school district argued, "If students do not like school nutrition meals they will bring less healthy food from home or skip the meal and go to eat fast food after school." Another typical comment, in this case a food service industry company, stated, "We have specific concerns that the limitation on starchy vegetables will limit regionally preferred foods, such as corn in Mexican foods, resulting in poor student acceptance of offered meals." A few commenters stated that under the proposed weekly starchy vegetable limit they would no longer be able to provide baked potato bars, which they stated are used to teach students how to build meals around a vegetable. Several commenters expressed concern that the weekly starchy vegetable limit would negatively impact the use of local produce. Other commenters expressed concerns regarding the impact of the proposed starchy vegetable limit on farmers and producers who have depended on USDA for prices support. Some commenters argued that the limitation would hinder the ability of schools to provide adequate calorie intake while reducing fats and sugar. Some commenters recommended having a weekly starchy vegetable limit at the elementary level only, but others argued that for many young children entering school, the only vegetables they will eat are peas, corn, and potatoes.

Other commenters made suggestion or requested clarifications. Several commenters asked how the maximum weekly starchy vegetable limit would count the corn or peas in blends of vegetables or soups, stews, and casseroles. Others asked for clarification regarding whether the weekly starchy vegetable limit applies to sweet potatoes. Some commenters would prefer a requirement for a variety of different vegetables during a week. Some commenters suggested that the proposed weekly limitation was unnecessary because the maximum calorie levels and the requirements for vegetable subgroups would naturally limit the number of starchy vegetables served. A few commenters asked that starchy vegetables

be allowed to meet the grain requirement. Several other commenters recommended increasing the limit to 2 or 3 cups per week, or allowing a gradual implementation of the provision. Some commenters recommended that the serving sizes of starchy vegetables should not exceed ½ cup and that there should be no second servings of potato products allowed.

Approximately 230 submissions addressed the proposed weekly limit on starchy vegetables without explicitly expressing support or opposition. A school district and a Jr/Sr high school asked how the provision would affect schools that offer multiple entrees, some with starchy vegetables and some without. A few commenters requested a definitive list of starchy vegetables. A school district asked about products that contain potatoes, like potato starch, as part of the ingredients. An individual commenter suggested that starchy vegetables should either be included under the grain component, or should be allowed to count towards either the vegetable or a grain components, similar to the treatment of legumes.

6.3.4.3 Other comments on vegetable subgroups

Approximately 210 submissions addressed vegetable subgroups in ways that did not fit into the other issue categories relating to the vegetable subgroups above. Several commenters argued that vegetable subgroups would make the meal patterns too complicated, and they recommended that vegetable subgroups be eliminated or encouraged, rather than mandated. Other commenters expressed concerns regarding how to get students to take an interest in eating some of the vegetable subgroups that are not the types of foods students eat locally. A State department of education suggested the combination of the dark green and orange vegetable subgroups, to match the HUSSC requirements.

A few commenters, including a State department of education, a school district, and a nutrition professional, requested clarification about the relationship between starchy vegetables and legumes. Other commenters, including a State department of education, a school food service staff member, and an individual commenter, asked whether legumes could count as a protein source rather than a vegetable. Two trade associations commented that mushrooms do not fit within any of the subgroups but the use of mushrooms should be encouraged. advocacy group and a municipal department of public health favored minimal processing for all vegetable subgroups.

6.3.4.4 Changes in 2010 Dietary Guidelines for Americans

Approximately four submissions addressed changes in DGA recommendations in the recently issued 2010 DGAs, as they relate to the proposed rule. A trade association and a food manufacturer pointed out that the Richard B. Russell National School Lunch Act requires the rule to reflect the most recent DGAs. A State department of agriculture commented that differences between the 2010 DGAs and the proposed meal patterns may cause confusion.

Approximately 125 submissions recommended expanding the proposed orange vegetable subgroup to include red vegetables, as provided in the 2010 DGAs. Commenters suggested that this change would give schools more flexibility in menu planning. Also, commenters asserted that red vegetables offer a variety of important nutrients, such as lycopene, that are not commonly found in other vegetables, and red vegetables like tomatoes are popular with children. A few commenters mentioned the possibility of a separate red subgroup as an option, and one individual commenter would prefer having red vegetables in their own subgroup.

Some commenters noted that the 2010 DGAs recommended average intakes of 5 cups of starchy vegetables per week (in a 2,000 calorie diet). Other commenters pointed out that potassium and fiber are two nutrients of concern listed in the 2010 DGAs, and starchy vegetables, specifically potatoes, are good sources of potassium and fiber.

6.3.5 Comments on fried vegetables (proposal does not prohibit)

Approximately 610 submissions addressed fried vegetables, and many of them speculated that the proposed limit on starchy vegetables was really directed toward addressing french fries. A significant

number of these commenters suggested restricting or eliminating fried or par-fried potatoes and other vegetables. Numerous commenters went further and would prohibit all deep-fried preparations. A few commenters pointed out that most schools have already eliminated fryers and prepare oven-baked french fries; other commenters recommended eliminating fryers from all schools. One individual commenter, however, thought that eliminating frying may not be necessary because the proposal already includes requirements for limiting calories, saturated fat, and sodium. An advocacy group stated that students in elementary schools where french fries were offered more than once a week were more likely to be obese than students in schools where french fries were never offered or offered once per week. A State department of health services commented that even oven-baked french fries can lead children to think that all fries they encounter at fast food restaurants are healthy. This commenter added that serving popular forms of potatoes, such as tater tots and fries, in competition with other, less-known vegetables should be discouraged.

6.3.6 Comments on salad bars (proposal does not address)

Approximately 645 submissions addressed salad bars, and more than half of them expressed concern that the rule would discourage salad bars because of the difficulty in determining if the required foods and portions are served. Many commenters discussed the benefits of salad bars in giving students the option of trying new foods and taking larger portions of foods they like, so students are likely to select and consume more fruits and vegetables. Some commenters requested that the final rule provide direction for the crediting of food served at salad bars and self-serve areas under the new requirements. One school recommended that fruit and vegetable bars with a nutritionally balanced variety be allowed to meet the requirement of a larger portion of fruit and/or vegetable. A commenter recommended that schools should increase salad bar options for fresh fruit and vegetables. Commenters generally saw a need for the rule to clarify how to incorporate salad bars into meal planning. A few commenters, however, raised concerns about salad bars. Two commenters observed that salad bars are time consuming and labor intensive and that hygiene and sanitation are sometimes a concern. A commenter also noted that salad bar foods may be high in fat and calories.

6.3.7 Other comments on vegetable component requirements

Approximately 260 submissions addressed the proposed vegetable component requirements in ways that did not fit into the other vegetable component issue categories above. Commenters raised a variety of other issues. Some of them requested clarification about “cups” and “servings,” especially for whole produce. Two trade associations encouraged the use of canned soup and pizza. One individual commenter suggested that the rule should require one vegetable per day for breakfast. Another individual commenter recommended that the meal patterns should recognize “super-foods,” such as quinoa. Another commenter requested that entrée salads be permitted to substitute for the main entrée because currently salads are only offered as a side.

6.4 Grains meal component

6.4.1 Proposed breakfast daily/weekly serving requirements

6.4.1.1 Support

Approximately nine submissions expressed support for the proposed grain requirements at breakfast. A State department of education supported the proposed breakfast guidelines with increased portions for fruits and grains. This commenter recommended no delay in implementing the proposed breakfast guidelines, because the increased portion requirement would improve the nutrient intake of the child. An advocacy organization asserted that requiring a grain and a meat/meat alternate in addition to fruit and milk at breakfast would create a more balanced meal.

6.4.1.2 Breakfast daily/weekly requirements should be greater

No submissions expressed this view.

6.4.1.3 Breakfast daily/weekly requirements should be less

Approximately 105 submissions suggested that USDA should reduce the proposed grains requirement for school breakfasts. Some school food service staff members were concerned about the increased quantity of food to be offered at breakfast, particularly for younger students, and the possible resulting increase in wasted food. Other commenters were concerned about increased costs. One commenter stated that consuming four “grain products” per day (breakfast and lunch combined) is excessive and would contribute to child obesity.

A policy advocacy organization suggested reducing the weekly requirement of grains served at breakfast as long as all grains offered are whole grain-rich: the daily grain requirement would remain as proposed (i.e., 1 ounce), but the weekly range would become a weekly minimum of 5 ounces (oz.), assuming all grains offered are whole grain-rich. This organization stated that with this approach, costs would be minimized and, at the same time, food service providers would be closer to meeting the two year post-implementation rule for whole grain-rich foods. A few commenters recommended replacement of a grain component with a protein because it would help regulate the child’s blood sugar and the food cost would not increase.

A number of grain-related trade associations jointly encouraged USDA to retain the current portion size at 14.75 grams equating to one grain serving for the school lunch program. They stated that increasing the serving size to 16 grams would mean reformulation, repackaging, and increased distribution costs to manufacturers without any real benefit to school children.

6.4.1.4 Other comments on breakfast daily/weekly grains servings requirements

Approximately 10 submissions provided other comments on the breakfast daily/weekly grains servings requirements. One trade association supported continued calculation of food/nutrient requirements on a weekly rather than a daily basis, saying that an approach that looks at the whole week’s worth of food is more practical as well as being more workable for school menu planners. A national health advocacy organization stated that because cereal is a frequent entrée item in school breakfast programs, USDA should apply the Women, Infants and Children (WIC) food package standard for breakfast cereal, which limits sugar content to no more than 6 grams of sugars per ounce of dry cereal. An advocacy organization urged USDA to limit sugar content in breakfast cereal.

6.4.2 Proposed lunch daily/weekly serving requirements

6.4.2.1 Support

No submissions expressed this view.

6.4.2.2 Lunch daily/weekly requirements should be greater

No submissions expressed this view.

6.4.2.3 Lunch daily/weekly requirements should be less

Approximately 2,035 submissions argued that the proposed grains requirements for lunch should be reduced. Regarding the proposed weekly lunch servings for grades 9-12, several commenter requested reducing the proposed weekly lunch requirement of 12-13 ounces. Their alternative recommendations for that age group ranged from 8 to 10 ounces per week. Another commenter stated that the proposed daily/weekly lunch requirement for grades K-5 was too high and would not effectively support teaching students about appropriate portion sizes as described in the DGA. Other commenters made more general statements in favor of lower requirements for grain servings in school lunches.

6.4.2.4 Other comments on lunch daily/weekly grains servings requirements

No submissions addressed this issue area.

6.4.3 New whole grains requirement

6.4.3.1 General support

Approximately 20,055 submissions expressed general support for the proposed whole grains requirement. Some of these commenters specifically stated that they supported the proposed staged implementation approach that is consistent with the proposed phased-in sodium reductions. Several commenters stated that they supported the proposed provisions because American children do not consume enough fiber and whole grains in their diets and the proposed increase in whole grains could more than double children's whole grain consumption.

A policy advocacy organization stated that HUSSC schools offer a serving of whole grain food at lunch at least three days per week, demonstrating that, while challenging, it is possible for schools to quickly move to achieve a whole grain standard. A few other commenters stated that they are already serving whole grain products or that they are readily available. Two additional commenters, including a county public health department, expressed general support for increasing portions of foods made with whole grains without directly referencing the grain requirements for school breakfasts.

6.4.3.2 General opposition

Approximately 50 submissions expressed general opposition to the proposed whole grains requirements. Several commenters opposed the proposed whole-grain provisions because they stated it would be too costly to comply with them. Many of these same commenters also stated that whole-grain products are less appetizing or less accepted by students. Some of these commenters stated that whole grain-rich products have more added sugar than products made with refined grains.

An individual commenter opposed the method of ounce equivalents and the quantity of grain that is recommended in the proposed rule. This commenter proposed setting requirements based on grams of total carbohydrates and fiber, which she stated could easily be identified and tracked by using the U.S. Food and Drug Administration (FDA) Nutrition Fact Panel found on all purchased food products. She recommended that the minimum grams of total carbohydrate and fiber be met monthly with 80 percent of the grains on the menu to be whole grain after two years.

An academic commenter was in favor of requiring whole grains to be served, but favored requiring offering of 100-percent whole grain products. This commenter asserted that there are many available alternatives for 100-percent whole grain products that make it unnecessary for children to continue to consume refined grains.

6.4.3.3 Final whole grains requirement (all grains offered must be whole grain-rich)

6.4.3.3.1 Support

Approximately 55,960 submissions expressed general support for the proposed final whole grains requirement that all grains served must be whole grain-rich. One commenter stated that "[t]his is easily do-able" because many schools already serve whole grains and their students have already become accustomed to whole grains as the new norm. The commenter asserted that manufacturers already offer a wide variety of popular, kid-tested whole grain foods.

6.4.3.3.2 Oppose (whole grain requirement should be less restrictive, e.g., something less than all grains offered)

Approximately 440 submissions opposed the proposed requirement that, within two years, all grains offered must be whole grain-rich. Reasons for their opposition included:

- Concerns about student acceptability and potential in loss of participation by students who do not like whole-grain products;
- The 2005 DGAs did not recommend that all grains be switched to whole grains, only at least half;

- The resulting increase in food cost (some commenters asserted that the cost increase would be more than USDA has predicted);
- The requirement does not allow for locally or culturally preferred foods;
- Concerns about product availability and labeling;
- There is no clear definition of “whole grain-rich” at this time;
- Desire to teach children that certain foods such as white bread are acceptable in moderation;
- Whole grains do not necessarily translate to increased dietary fiber intake;
- A requirement that all grains served must be whole grain-rich does not recognize the dietary contributions of enriched flours; and
- Concerns that the switch to whole grains would result in menus not meeting the RDA for iron.

The following alternatives were offered by commenters:

- Setting the final requirement equal to proposed interim requirement (at least half of the grains offered to be whole grain-rich);
- Setting the final requirement at 75 or 80 percent of all grains offered;
- Allowing a certain number of grain servings per week that do not meet the whole grain-rich requirement;
- Following the HUSSC requirement of providing one serving of whole grain daily as identified in Gold with Distinction Guidelines;
- Requiring that the majority of grains (e.g., 5 out of 7 servings) be whole grain-rich as opposed to all of them; and
- Applying the 100 percent requirement only to breads (e.g., sliced, bagels, muffins).

6.4.3.3.3 Other comments on whole grain requirement

Approximately 60 submissions addressed the proposed whole grain requirement in ways that did not fit into the issue categories discussed above. Several of these commenters suggested that USDA should require that half of grain servings be 100 percent whole grains instead of just whole grain-rich. One of these commenters, an individual commenter, stated that there is no reason that schools cannot offer a full 50 percent of their grains as whole grains, and further, that 2 years post implementation, the percentage could move to 75 percent whole grain. Another individual commenter stated that whole grains must gradually be increased to 100 percent. A different individual commenter stated simply that the rule should not permit “whole grain-rich” foods in place of whole grains, because, as proposed, the rule would allow nearly 75 percent of children’s daily grains to be refined.

An association of nutrition professionals encouraged USDA to work with states and districts to closely monitor student participation and acceptance of meals with 50 percent whole grain-rich foods and 100 percent whole grain-rich foods. This commenter also urged the evaluation of the impact of whole grains on offer versus serve selections. An advocacy organization also recommended that USDA include a plan to implement the IOM recommendation that the “temporary whole grain rich standard” be evaluated and upgraded after the first two years of implementation. A large metropolitan school district asked USDA to allow “rounding up versus rounding down” to nearest quarter on gram equivalents in products.

6.4.3.4 Interim whole grains requirement (upon implementation of final rule, at least half of grains offered during the week must be whole grain-rich)

6.4.3.4.1 Support

Approximately 50 submissions specifically supported the proposed interim whole grains requirement. One of these commenters stated that gradually increasing the amount of whole grain foods served until whole grain is all that is served is a good way of easing kids into the change.

6.4.3.4.2 Interim whole grain requirement should be greater

A food policy advocacy organization did not like the fact that, as proposed, the interim whole grains requirement would result in as little as one quarter of grain servings being whole grain. An advocacy organization stated that the interim requirements should be that 50 percent of grain servings be whole grains, not just whole grain-rich.

6.4.3.4.3 Interim whole grain requirement should be less

No submissions expressed this view.

6.4.3.4.4 Other comments on interim whole grain requirement

Approximately eight submissions addressed the proposed interim grain requirement without explicitly expressing support or opposition. An advocacy organization recommended that USDA include a plan to implement the IOM recommendation that the “temporary whole grain rich standard” be evaluated and upgraded after the first two years of implementation.

6.4.3.5 Whole grains implementation timeline (proposed 2 years)

6.4.3.5.1 Timeline should be longer (> 2 years)

Approximately 555 submissions expressed support for a longer implementation timeline for the proposed whole grains requirement. Many of these commenters cited as justification for a delay the fact that USDA and FDA currently have different standards for “whole grain-rich.” They asserted that these standards need to be reconciled and the grain/bread instructions updated to provide clear guidance to schools and food manufacturers. Some of these commenters also stated that many school districts would not be able to incur the costs associated with this proposed change. Some of these commenters expressed concern that the aggressive timeline proposed by USDA could lead to reduced acceptability and ultimately decreased program participation, in addition to the higher costs. A large metropolitan school district and a professional association argued that the proposed timeline could result in premium pricing due to demands that exceed industry’s ability to provide sufficient product. A school district asserted that additional time would provide for development of product labeling recognizable by both the Child Nutrition Programs and general public, allowing for greater consumer education.

A number of commenters recommended that the whole grain requirement be delayed until the 2013-2014 school year (SY) without specifying whether they were referring to the proposed interim or final requirement. One school district suggested delaying the whole grain requirement until SY 2014-2015 school year.

Timing of Interim Requirement

The proposed rule would make the interim requirement that half of the grains offered during the school week must be whole grain-rich effective upon implementation of the final rule. Some commenters requested a delay in the interim requirement. Several commenters stated that USDA should give school three years to meet the interim requirement. Many of these same commenters stated that USDA should build in an assessment period after the phase-in to gauge student acceptance before setting the deadline for 100 percent whole grain-rich products. A few commenters suggested that USDA provide five years for schools to meet the interim requirement.

Timing of Final Requirement

The proposed rule would make the final whole grains requirement that all grains offered must be whole grain-rich effective two years after implementation of the final rule. Some commenters requested a delay in the implementation of the final whole grains requirement. Several commenters, including major food manufacturers, argued that 2 years does not give manufacturers and schools enough time to develop and test the acceptability of products. One food manufacturer stated that the industry standard for new product development is 18 months.

Suggested alternate implementation timelines for the final whole grains requirement included:

- Three years;
- At least three years; and
- Five years.

6.4.3.5.2 Timeline should be shorter (< 2 years)

No submissions expressed this view.

6.4.3.5.3 Other comments on whole grains implementation timeline

Approximately 90 submissions addressed the whole grains implementation timeline without explicitly expressing that it should be longer or shorter. Some of these commenters, including State departments of education, a professional association, and an advocacy association, approved of the proposed timeline. A few commenters, including a food manufacturer and a school food service staff member, asked USDA to consider all the needed steps in a successful transition to consumption of more whole grains when finalizing the timeline.

6.4.3.6 Clarify the criteria for whole grain-rich products

Approximately 520 submissions asked for clarification of the criteria for whole grain-rich products. These commenters generally noted that USDA and FDA currently have different definitions for “whole grain-rich,” and asserted that the lack of a clear definition would make it difficult for manufacturers and school districts to comply with the proposed timeline. Many of these commenters asked USDA to clearly state the definition and crediting before the final rule is published or leave the current weight standards in place (14.75 grams) while delaying implementation of any new whole grain requirements. As one food manufacturer stated, “Production and procurement of an undefined product is virtually impossible. The definitions must be reconciled and clear direction given.” A food manufacturer and a school food service staff member asked that a definition of whole grain-rich be in place for at least a year before any requirements go into effect. Individual commenters and a school food service staff member argued that the lack of guidance in the proposed rule regarding the whole grain-rich definition, and the significant impact these changes would have on schools meeting any new meal pattern requirements justifies a request for delay of implementation.

A national association of nutrition professionals supported using the IOM’s recommended criterion for whole grain-rich foods and the whole grain criteria from the USDA HUSSC. This commenter stated that USDA has already developed guidance materials for whole grains and whole-grain rich products for the HUSSC program. In addition, training has been provided to State Agencies and hundreds of local schools have become familiar with the definitions. Over a thousand schools have currently met the HUSSC criteria and have been recognized by USDA.

Other commenters, including a nutrition professional and an individual commenter, stated that USDA needs clear and consistent terminology for whole grains, and that the IOM temporary “whole grain-rich” definition is too complicated. An advocacy organization was concerned that the IOM definition of whole grain servings does not ensure that grain products contain 50 percent whole grain. One school district asked if the 51 percent guideline for whole grain-rich would apply to the grain content or to the weight of

the product. A food manufacturer stated that it is not clear whether the requirement refers to 51 percent of the product or the grain in the product.

6.4.3.7 Concerns about product availability

Approximately 365 submissions expressed concerns about the availability of whole grain or whole grain-rich products within the proposed timelines. Schools stated that their vendors need time to continue improving their whole grain products so that they are acceptable to students. Many of these commenters accompanied these concerns with a request that USDA delay implementation of the proposed whole grains requirements, as discussed in Section 6.4.3.5.1 above. A few commenters suggested that USDA should consider the ability of agricultural production to meet the increased demand for whole grains. An individual commenter stated that reformulation of products to meet the new whole grain requirements risks price increases, and that some regions currently have little or no supply of whole grain products. A school food service staff member commented that manufacturers may not be able to produce items meeting 100% whole grain within two years, and recommended that a review process assess the interim whole grains requirement after two years to determine student acceptance and cost implications on school meal programs.

Some commenters stated that until the market for whole grain and whole grain-rich products grows beyond the school meal programs, the cost of the products would be significantly higher than what schools are presently incurring. Three advocacy organization commended USDA for its work to improve Child Nutrition USDA Foods Program/Child Nutrition Commodities Program (USDA Foods or CN Commodities Program) offerings and the selection of whole grain products. These commenters encouraged USDA to continue this effort and work with State Agencies to ensure that schools have full access to all whole grain products available. An individual commenter recommended that all USDA Foods grain products should be whole grain-rich.

A State department of education stated that products meeting the proposed definition are available and are not significantly more expensive. This commenter also asserted that recipe adjustment to meet the proposed definition would be easy for schools to implement. Another commenter stated that industry will reformulate products when they know there is a market, but not until then. A school food service staff member and a religious organization expressed concern that “vendors may choose not to bid with systems due to increased regulations and requirements [that would] increase the number of deliveries and lack of availability of products meeting the new specifications.”

6.4.3.8 Concerns about student acceptability

Approximately 85 submissions expressed concerns about student acceptability of whole grain or whole grain-rich products. Many of these commenters discussed past experience with poor student acceptability of such products (e.g., USDA 100% whole grain pasta products), and they asked for more time to accustom students to whole grain and whole grain-rich products. A food manufacturer stated that a gradual approach to increasing whole grains is necessary to ensure optimal products are achieved without negatively impacting student acceptability and meal program participation.

One school food service staff member asserted that students, regardless of hunger, will throw away unappealing and unpalatable food and may turn completely away from school meals if regulations do not take into account student preferences. A religious organization stated that students who are eligible to receive free or reduced meals have been known to skip eating altogether because they did not like what was being served. This commenter added that experience indicates that once a student stops eating school meals, they rarely resume doing so. A school food service staff member asserted that younger students accept whole grain products, but secondary students are refusing to take them. This commenter stated that the school has begun nutrition education for the younger students to teach the importance of whole grains and believe this has helped with student acceptance.

6.4.3.9 Concerns about how to identify whole grain products/product labeling

Approximately 55 submissions addressed issues with the labeling of whole grain and whole grain-rich products. A State council on food policy and a State department of health asserted that current labeling practices do not provide adequate information and formulas are often necessary to determine if a product meets the “51 percent whole grain rich” requirement. These agencies stated that USDA should develop more simplified methods for determining if a product meets the requirements. Further, these agencies recommended that USDA should provide clear directives to producers regarding adequately labeling products for ease of content identification. Another commenter asked if there were plans to require the Child Nutrition (CN) Label to specify if whole grains are in the product.

A national association of nutrition professionals encouraged USDA to work with FDA to finalize labeling for the whole grain content of food products, which would make it easier for schools to identify whole grain-rich products. Similarly, two advocacy organization stated that FDA labeling of whole grain content of food products would significantly reduce the burden of proper identification of whole grains by school food service operators. These commenters also stated that USDA should work with industry and stakeholders to ensure that program operators can identify and procure whole grain-rich foods. One school food service staff member asked whether it should count Barilla Plus as a grain or as a legume.

6.4.3.10 Other comments on whole grains requirements

Approximately 215 submissions addressed the proposed whole grains requirements in ways that do not fit into the issue categories discussed above. Some commenters, including a State department of education and a school district, stated that donated foods from USDA must align with the new standards. A school district and a food manufacturer cited the need for nutrition education to accompany the proposed changes. Several commenters expressed concern about the extra cost of whole grain and whole grain-rich products.

A State department of education and other commenters stated that schools should have the flexibility to meet Federal requirements with a mix of 100 percent whole grain products, whole grain-rich products, and “a select few” enriched-grain products. These commenters stated that this flexibility to balance 100 percent whole grain items with some refined grains would help menu planners determine which breads and grains have significant cost benefit and when a whole grain-rich item is not as palatable as other 100 percent whole grain items on the menu. They also asserted that requiring only whole grain-rich foods may increase the use of foods made with whole grain ingredients that are not necessarily wholesome but confer a “health halo effect” by virtue of containing whole grain ingredients.

A State department of education recommended that grains incorporated into unbreaded meats (e.g., meatballs) be allowed to count toward the grain/whole grain requirement. This commenter stated that this would assist schools with meeting the proposed requirement in a cost-efficient manner (i.e., using crushed bran flakes or oatmeal as a binding agent).

A food manufacturer encouraged USDA to simplify the documentation process for “whole grain rich foods” and to accept a single form of documentation for all reimbursable program audits and for the HUWSC. A national health advocacy organization recommended that USDA add a fiber requirement to the whole grains standard.

6.4.4 Up to one serving per day of a grains-based dessert would be allowed

6.4.4.1 Support

The proposed rule would allow schools the option to meet part of the weekly grains requirement with grain-based dessert. Under the proposed rule, up to one serving per day of a grains-based dessert would be allowed as part of the grains component. Approximately 25 submissions supported this proposed provision. A few of these commenters stated that the proposed provision would add some flexibility to add calories and meet the proposed whole grain requirements.

A nutrition professional supported the proposed provision but stated that the FNS Grains/Bread (G/B) Instruction needs to be revised. This commenter stated that a child should not be served a 4 oz. brownie to meet the grains/bread requirement, and added that there may need to be restriction on the amount of fat and added sugars in the desserts.

6.4.4.2 Grains-based dessert allowance should be greater (more than 1x per day)

No submissions expressed this view.

6.4.4.3 Grains-based dessert allowance should be less (less than 1x per day or no grain-based dessert)

As an approach to limit added sugar in school meals, approximately 125 submissions recommended that USDA further limit the number and portion size of grain-based desserts served over the course of the week. Many of these commenters suggested the limit be set a twice per week. A few commenters cited sources that they asserted show that grain-based desserts provide the largest source of calories in the diets of children aged 2-18, at an average 138 calories per day. An advocacy organization also cited research that it stated shows that grain-based desserts are one of 6 food types contributing empty calories to the diets of children and adolescents.

For portion size limits, a few commenters suggested the following for grain-based desserts:

- One ounce for cookies, and
- Two ounces for cereal bars, granola bars, pastries, muffins, doughnuts and other bakery items.

One school district opposed the proposed grain-based dessert allowance, saying that it very rarely offers dessert as part of its meals, and that as a result, the children consume a large amount of fruit. Another school district stated the proposed grain-based dessert allowance would encourage the serving of desserts that are not necessarily wholesome but that confer a “health halo effect” by virtue of including whole-grain ingredients.

Two State departments of education opposed the proposed grain-based dessert allowance. One of these departments of education stated that allowable foods and portions are in the bread/grain instructions and that no additional references are necessary. The other commented that the proposed grain-based dessert allowance would allow “sweetened grains” to count as a serving of grain/breads for breakfast. This commenter stated that school meals should not contribute to children’s consumption of less-nutritious, refined-grain foods that contain solid fats, added sugars, and sodium. According to this commenter, the 2010 DGAs indicate that grain-based desserts account for almost six percent of saturated fat intake in the U.S., the third highest source after regular cheese (8.5 percent) and pizza (5.9 percent). Similarly, a school food service staff member urged USDA to consider placing limitations specifically on “sweetened grains.”

6.4.4.4 Other comments on grains-based desserts

Approximately 10 submissions addressed grains-based desserts but did not explicitly express support or opposition to how these foods were discussed in the proposed rule. A non-profit organization recommended that USDA require that all grain/bread products served in school meals contain no more than 35 percent sugar by weight. Similarly, an academic commenter suggested that a maximum sugar content needs to be “clarified” for homemade baked goods such as apple crisp. A company recommended that USDA specify in its G/B Instruction that grains-based desserts be made with whole grain and ensure that those grain-based desserts are not a significant source of solid fats and added sugars. An individual commenter stated that allowance for a grain-based dessert while not allowing for a baked potato seems inconsistent.

6.4.5 Exception for schools in outlying areas (American Samoa, Puerto Rico, Virgin Islands) to serve a vegetable (e.g., yams, plantains, or sweet potatoes) to meet grain requirement

6.4.5.1 Support exception

Approximately 130 submissions supported the meal pattern exception that allows schools in outlying areas to serve a vegetable such as yams, plantains, or sweet potatoes to meet the grains requirement. These comments are summarized below in Section 6.4.5.3. An advocacy organization did not directly address the exception for schools in outlying areas, but it did applaud USDA's willingness to be responsive to school requests related to meeting cultural food preferences.

6.4.5.2 Oppose exception

A nutrition professional stated that, prior to publication of the final rule, USDA should survey the territories of American Samoa, Puerto Rico, and the Virgin Islands to see if the acquisition of grains is still a problem. This commenter urged USDA to eliminate the exception for schools in outlying areas in the final rule. The commenter stated that the meal patterns recommended by the IOM are based on children meeting targets for 24 nutrients, and the grain/bread component provides valuable nutrients that are not provided by starchy vegetables.

6.4.5.3 Other comments on exception (e.g., apply nationwide)

Approximately 10 submissions addressed the exception without explicitly expressing support or opposition. Most of these commenters requested that the exception be expanded to all schools in the United States. A school district and a food manufacturer argued that expanding the exception would allow schools to accommodate cultural and geographical preferences. A food manufacturer stated that starchy vegetables often can offer more nutrition than a refined grain and could provide more ways to increase vegetables in the meal plans. This commenter suggested that if the starchy vegetable is counted as a grain, it should not count as a vegetable for that meal. An individual commenter asked USDA to explain why it would allow substitution of whole grains with "whole grain-rich" foods (up to 49 percent refined grains) rather than with potatoes, yams, or plantains, which the DGAs recommend as a replacement for refined grains.

A State department of education also supported expanding the exception and stated that, at a minimum, schools serving diverse populations could be allowed to request approval to use starchy vegetables to meet the grain requirement. Similarly, a policy advocacy organization recommended that exception for outlying areas be expanded to also include schools within the U.S. serving high proportions of immigrant populations. This commenter added that local purchasing of food for school meals has been shown to assist in providing culturally appropriate fruits, vegetables, and other foods in traditional menus.

6.4.6 Other comments on grain component requirements

Approximately 1,870 submissions addressed the grain meal component in ways that did not fit into the issue categories discussed above. A large food manufacturer asked for clarification regarding how the rounding rules would apply to grains under the new standards. A food service staff member stated she anticipated additional difficulty and training needed on how to calculate "credible" grains.

Two grocery trade associations and a major soup producer noted that the meal patterns in the proposed rule refer to grain/bread servings in ounce equivalents only, which is different from the USDA Food Buying Guide's current terminology and method for determining a portion that provides one grain/bread serving. These commenters recommended that USDA maintain the School Bread Equivalent as defined in Exhibit A of the current Food Buying Guide. They stated that a switch to ounce equivalents could lead to (1) inconsistent grain serving sizes when compared to the current approach, (2) increased amounts of grain being offered, and (3) higher food costs for schools. A major food manufacturer stated that it opposed a change in methodology to determine portion size; it recommended that USDA maintain the School Bread Equivalent as defined in Exhibit A of the current Food Buying Guide and clearly state it in the final rule. This commenter stated that the meal patterns set forth in the proposed rule refer to

grain/bread servings in ounce equivalents only, and that this is different from the current terminology and method used to determine the portion size required to provide one grain/bread serving.

Similarly, a food manufacturer urged USDA to retain the current methodology for calculating a serving of grains. This commenter stated that a change in methodology would require significant reformulation efforts by industry and could result in a large reduction in the number of products available for use in the school meal programs.

6.5 Meat/meat alternate meal component

6.5.1 General support

Approximately 10 submissions expressed general support for the proposed meat/meat alternate component. A school food service staff member approved of the proposed decreases in the protein requirement, adding that “most Americans get about three times the amount of protein they need.” This commenter stated that the proposed requirements would allow schools to reduce fat content in the meal overall. An advocacy organization supported what it called the proposed rule’s emphasis on lower-sodium lean meats and meat alternates as a way to help schools reduce saturated fats and sodium. A nut producer and processor approved of the proposed meat/meat alternate component because it would “open the door” to greater emphasis on meat alternates such as nuts in school breakfasts and lunches. A nut trade association supported the changes to the meat/meat alternate requirements, which they stated encourage protein from plant sources.

6.5.2 General opposition

Approximately 70 submissions expressed general opposition for the proposed meat/meat alternate component. Some commenters, including advocacy organizations, a school food service staff member, and a community organization, opposed the proposed requirement for schools to meet daily and weekly requirements for meats/meat alternates. These commenters stated that USDA should instead set a weekly requirement with no daily minimum. Some of these commenters argued that a daily meat requirement might increase consumption of saturated fat and sodium, because a 1 oz. daily minimum would often have to be augmented with additional meat/meat alternate to make a reasonable portion. They commented that applying a weekly requirement, without daily minimums, might help to decrease costs and increase menu planning flexibility. A school food service staff member asserted that a daily meat requirement for breakfast would make grab-and-go choices unrealistic or less palatable.

A food manufacturer commented that it would be costly and logistically difficult to produce meat or meat alternates in the different serving sizes proposed for the various grade levels. Two school districts opposed any increase to the meat/meat alternate requirement. Another individual commenter said that the meat requirement should be reduced to one serving per day with an increase in meat alternatives (e.g., low-sodium beans).

An individual commenter opposed the proposed quantities of meat/meat alternate and said that the American diet is not deficient in protein. She also recommended tracking the amount of protein in school meals by grams. She said that the use of grams of protein would allow alternative protein sources such as tofu, ground flaxseed, and protein found in whole grains to be counted. Another individual commenter urged FNS to stop endorsing meat and milk products.

6.5.3 Proposed breakfast daily/weekly requirements

6.5.3.1 Support

Approximately 35 submissions expressed support for the proposed requirements for meat/meat alternates for school breakfasts. Some of these commenters stated that a breakfast with a meat or meat alternate instead of two servings of grain would provide greater satiety and help increase protein intake for those children who do not drink milk. A farm entity said that the proposed requirement would yield more balanced, diversified, and nutritious breakfasts.

Several of those in support, including school districts, were concerned about the additional cost of complying with the proposed requirement. Although expressing support for the proposed requirements, a few commenters asked for USDA to provide flexibility in menu planning by eliminating the daily minimum requirement. A school food service staff member supported the inclusion of meat/meat alternate at breakfast, but stated that a 1 oz. minimum daily requirement would limit the offerings that would be available to students with a significant increase in cost.

A State department of education acknowledged that other stakeholders had advocated against implementing the new guidelines for breakfast until additional sources of funding were secured. This State commenter recommended that USDA not delay implementation of the breakfast guidelines because the increased portion requirements would improve nutrient intake.

An agricultural trade association recommended that the regulations require high-quality protein sources, such as eggs, to be offered at breakfast. A dairy trade association was supportive because the proposed rule could increase consumption of yogurt at breakfast, which it stated would provide students with high-quality protein, calcium, and other dairy nutrients. An individual commenter asserted that nuts and seeds should not be a main source of protein due to the increasing incidence of food allergies, and stated that the 2010 DGAs specifically note the rise of food allergies.

6.5.3.2 Breakfast daily/weekly requirements should be greater

No submissions expressed this view.

6.5.3.3 Breakfast daily/weekly requirements should be less

Approximately 910 submissions were in favor of lowering the proposed daily or weekly requirements for meat/meat alternate in school breakfasts. Several of these commenters argued that there is insufficient scientific support for the proposed meat/meat alternate component at breakfast, particularly the weekly requirement for high schools. They asserted that the proposed requirement would perpetuate the failure for school meals to meet saturated fat goals and would reduce the likelihood of schools achieving the proposed sodium goals. They also stated it would prevent schools from using breakfast in the classroom and other creative modalities. Several other commenters also argued that the proposed rule would make it difficult to achieve the proposed goals for saturated fat and sodium with the limited choices of acceptable breakfast proteins readily available.

Several commenters stated that the proposed rule requires too much food to be served to children (particularly younger ones) for breakfast and that the proposed meat/meat alternate provisions would contribute to that problem. They asserted that the proposed provisions would result in increased plate waste, particularly in schools that offer limited time for children to eat breakfast.

Many of the commenters stated that requiring the meat/meat alternate component at breakfast would be too costly, which could result in schools closing their breakfast programs. One school food service staff member argued that the daily minimum meat requirement at breakfast should be phased in gradually to allow schools to make operational adjustments and to find products to meet the requirement that will be affordable and acceptable to students. Some of these commenters suggested that the proposed changes to school breakfast requirements should not be implemented until additional Federal funding is in place.

Several commenters argued that the proposed daily meat/meat alternate requirement would create logistical difficulties for schools with limited or no food preparation equipment. They stated it could necessitate the purchase of hot holding equipment in satellite and non-traditional service locations, such as hallways and classrooms, where currently only the two-grain option for breakfast is utilized. Other commenters argued that the proposed requirement would make it difficult to offer Breakfast in the Classroom programs due to the importance of maintaining proper temperatures.

As an alternative to the proposed requirements, a school food service staff member suggested requiring a meat/meat alternate be served 3 days per week, and continue to credit breakfast entrees as a grain/meat, 2

meats or 2 grains. Two school food service staff members proposed requiring that a total of 3-8 meat/meat alternates be served during breakfast each week, along with a total of 7-10 grains each week, depending on the age group.

6.5.3.4 Other comments on breakfast daily/weekly meat requirements

Approximately 195 submissions addressed the proposed meat/meat alternate requirements for breakfast without explicitly expressing support or stating that they should be more or less. Several commenters asked USDA to allow weekly averaging of the meat/meat alternate for breakfast and to eliminate the proposed daily requirement. Many of these commenters asserted that defining a daily menu structure would eliminate the flexibility of developing popular, appealing, cost effective menu options.

A few commenters, including a food service industry company, suggested phasing in the proposed breakfast requirements for meat/meat alternates. These commenters argued that gradual implementation would allow schools and their contractors to adjust contracts and would prevent schools from leaving the school breakfast program. A school district and a school food service staff member stated that if USDA retains the breakfast requirements as proposed, it should consider allowing the protein grams in fluid milk be counted as a predetermined serving size or portion thereof.

A State department of community health recommended that USDA allow for flexibility in the daily breakfast meat/meat alternative requirement based on the type of breakfast service. This commenter stated that there are concerns from schools that serve breakfast in the classroom that the proposed meat/meat alternate requirement would be very challenging to do on a daily basis as there are limited options that can be safely transported and held in the classrooms. Some school districts asked USDA to allow greater menu flexibility for children who do not eat meat at all or who do not want to consume a meat at breakfast. A school district said that the meat/meat alternate requirements for breakfast should be based on protein content, adding that it is the complete proteins amount that is important, not the source of that protein. One school district expressed concern that the proposed meat requirement at breakfast could either eliminate popular breakfast choices.

6.5.4 Proposed lunch daily/weekly requirements

6.5.4.1 Support

Approximately four submissions expressed support for the proposed meat/meat alternate requirements at lunch. A State department of education expressed support for the proposed lunch serving sizes, saying they would “provide a good protein source for the children.” Another State department of education agreed with continuing the allowance for the meat/meat alternative quantity to vary daily with the minimum daily amount of 1 oz., while meeting weekly totals. A producer and processor of nuts approved of the proposed lunch requirements, because they would force schools to use protein sources like nuts that are high in nutrients and have the most nutritional benefit per ounce.

6.5.4.2 Lunch daily/weekly requirements should be greater

Approximately 15 submissions supported higher requirements for meat/meat alternates in school lunches. In two different submissions, a food manufacturer recommended a minimum of 2 oz. meat/meat alternate per student per day for lunch. Similarly, a school food service staff member also supported a 2 oz. daily minimum, because, according to the commenter, many studies are now saying the amount of protein that is eaten is not enough while the carbohydrate consumption is too high. A rural school stated that the restriction of protein to 2 oz. is questionable, because its children eat protein as a matter of course. A nutrition professional preferred to see more meat/meat alternate served at lunch and none at breakfast.

6.5.4.3 Lunch daily/weekly requirements should be less

Approximately 10 submissions supported lower requirements for meat/meat alternatives in school lunches. A school district stated that requiring 2 oz. of meat/meat alternate daily for grades 9-12 seems

excessive compared to the proposed 1 oz. daily requirement for grades K-8. This commenter suggested that the increase go from 1 oz. to 1.5 oz.

6.5.4.4 Other comments on lunch daily/weekly meat requirements

Approximately 25 submissions addressed the proposed lunch requirements for meat/meat alternates without explicitly expressing support or stating that they should be more or less. Several commenters recommended that USDA adopt the weekly meat/meat alternate requirements without the daily minimums for breakfast and lunch. An advocacy organization argued that this would increase menu flexibility while reducing the consumption of fat and sodium caused by the need to serve a meat/meat alternate each day. Three school districts commented in support of prepared or pre-cooked entrées for lunch, saying that they are popular with children, as well as safer and faster to prepare with the available labor force.

6.5.5 Retaining the current grains/meat-meat alternate breakfast component (proposal requires both at breakfast – not one or the other)

Approximately 21 submissions wrote in favor of retaining the current provisions that allow grains and meat/meat alternates to be interchanged at breakfast. As justification, they listed many of the same reasons summarized in Sections 6.5.2 and 6.5.3.3.

6.5.6 All meats/meat alternates must be offered in the main dish or as part of the main dish and up to one other food item other than a dessert

An academic commenter argued that USDA should no longer require that reimbursable meat/meat alternates be offered only in the main dish or as part of the main dish. She stated that given the shift in focus to fruits, vegetables, and whole grains, there is no nutritional reason school lunches have to be centered around a meat dish, and there are too few defined non-meat alternatives to make them a consistent option.

6.5.7 Changes in 2010 DGAs

6.5.7.1 Support requiring specific meat subgroups

Approximately 10 submissions supported requiring specific meat subgroups. An advocacy organization and seafood trade associations suggested that USDA establish a separate subgroup for seafood, and that USDA should require schools to serve fish once or twice per week because of its health benefits. They said that this would comport with a key recommendation of the 2010 DGAs. A producer and processor of nuts wrote in favor of a separate protein subgroup for nuts, seeds, and soy products as a way to diversify student diets while reducing intake of solid fats.

An individual commenter favored the protein subgroups in the 2010 DGAs, because he asserted they would guard against any overemphasis of any one group of protein, particularly those that have been shown to have greater fat content and/or cholesterol. Another individual commenter recommended that USDA place explicit weekly limits on red and processed meats; she argued that relying on indirect measures on total fat, saturated fat, and sodium is unnecessarily difficult for schools and does not provide useful guidance for parents and children in understanding nutrition.

A poultry trade association expressed concern that meats and meat alternatives would be in one combined category. This commenter recommended that USDA maintain the separate category for lean meat, poultry, or fish, or at least add a minimum amount of these proteins that should be offered in meals on a weekly basis.

6.5.7.2 Concern about requiring specific meat subgroups

Approximately 15 submissions expressed concerns about requiring specific meat subgroups. Two employees of a State department of education asserted that a weekly requirement for seafood would be cost-prohibitive to many schools and that many parents do not recognize nuts, seeds, and soy products as

a substitute for meats. Rather than requiring protein subgroups, these commenters suggested limiting menus with a pre-prepared meat/meat alternate (entrée) to no more than 1-2 days per week. One State department of education simply stated that it is opposed to protein subgroups. Another State department of education did not support protein subgroups, commenting that they would further complicate menu planning, and that different regions have different tastes.

A State department of agriculture suggested further evaluation of the protein subgroups recommended by the 2010 DGAs and their impact on food costs prior to adopting them. This commenter stated that required minimum servings of each protein subgroup may not be feasible in certain areas of the state. A trade association recommended that USDA carefully consider the practical implications, including the economic aspects, of shifting the patterns of protein foods within the school meals program. This commenter stated that the protein content of these foods varies, and different protein sources may provide varying levels of sodium, saturated fat, and calories to meals. This trade association also recommended that USDA balance the recommendation for variety against the amount of protein needed to qualify for the meat/meat alternate Child Nutrition program credit.

A food manufacturer argued that because children currently consume little or no seafood in their diet, the incorporation of seafood in the meal patterns should be accomplished gradually and with caution. It also asserted that it is critical to ensure that the seafood products offered are safe, acceptable and low in sodium and saturated fat. A dairy trade association asked if dairy meat alternates such as cheese and yogurt would remain acceptable substitutes for all protein subgroups if subgroups were adopted. An individual commenter supported gradual changes in the foods presented to schoolchildren, such as pairing or mixing healthier foods with ones already familiar to children. For example, nuts and seeds may be more successful as a trail mix, a supplement to salad, part of breakfast cereal, or a yogurt topping.

6.5.8 Concerns about availability of products that meet meal requirements

Approximately 15 submissions expressed concerns regarding the availability of products that meet the proposed requirements. A State department of education asked whether the CN Commodities Program would provide low-sodium processed meats, cheeses, and other meat/meat alternate products. This commenter stated that the current selection of low-sodium meat/meat alternate items from USDA Foods seems to be quite limited.

6.5.9 Tofu

6.5.9.1 Do not allow tofu as a meat alternate

Approximately three submissions supported USDA's decision not to propose allowing commercially prepared tofu to be credited as an allowable meat alternate. A nutrition professional asserted that allowing tofu as a meat/meat alternate is not appropriate because there is no standard of identify for the product. Two school food service staff members simply stated, "Do not make mandatory," because of "[l]ow student acceptability."

6.5.9.2 Allow tofu as a meat alternate

Approximately 190 submissions expressed support for allowing tofu to count as a meat alternate. These commenters included State departments of education, individual citizens, food banks, advocacy organizations, and a State association of school nutrition professionals.

Many of these commenters encouraged the Federal Government to develop a standard of identity for tofu and other soy products, which some said would allow school districts to respond to requests by students and parents for vegetarian and vegan protein options. A State department of education strongly encouraged USDA to develop a standard for creditable tofu, and stated that the 2005 DGAs included tofu in the category of meat/meat alternatives. An individual commenter urged USDA to ask the FDA for a special provisional license for the use of tofu products or to approve a certain brand of tofu for use in school meals.

Several commenters asserted that allowing tofu as a meat alternate would allow a wider range of healthy entrees, and that any concern about the protein content is unfounded, as protein is not considered to be a “nutrient of concern.” A charter school stated that current meal pattern requirements mean that vegetarian meals that contain tofu also need to have an additional protein source such as yogurt, beans, or cheese to meet credible protein minimums which often unnecessarily adds calories and cost to the meal, and does not make sense for culinary design.

Some of the commenters addressing this topic, including an animal rights organization, asserted that allowing tofu as a meat alternate would encourage vegetarian and vegan students to participate in the school meals programs. According to these commenters, tofu and non-dairy milks play an important role in ensuring that vegans and vegetarians are able to meet their protein requirements. The animal rights organization added that the regular addition of tofu (and non-dairy milk) to school meal programs would help counteract that perception that meals must be centered around a meat entrée, and would improve the nutritional health of children at the same time.

6.5.9.2.1 How to credit tofu

Approximately 10 submissions addressed how tofu could be credited as a meat alternate in school meals. An advocacy organization recommended allowing a common serving size to guarantee a comparable amount of protein (5 grams of protein): 3 oz. of tofu equal 1 oz. equivalent for meat/meat alternate. A soy trade association recommended a similar approach in which a whole-bean soyfood would be considered comparable to a 1 oz. meat equivalent when it contains approximately 5 grams per protein per serving size. This trade association and two advocacy organizations also endorsed using the CN labeling approach to credit meat/meat alternate equivalents for soyfoods based on 5 grams protein content per serving size and the nutrient analysis provided by the manufacturer. For tofu, these commenters asserted, the protein content ranges from 3 grams protein per ounce for extra firm to 2 grams of protein for soft tofu. These commenters stated that a 3 oz. serving size of tofu of any type would supply at least 5 grams protein per serving size.

Similarly, State department of education suggested that USDA consider a meat equivalency for tofu based on grams of protein. For example, this commenter stated that 7-8 grams of protein in a product could be equivalent to 1 oz. of meat/meat alternate. A State department of education stated that the American Dietetic Association suggests that tofu with 5 grams of protein equals one ounce of meat. A school food service consulting firm encouraged USDA to develop a simple crediting formula for tofu and to consider making all component calculations easier for operators and manufacturers. A food manufacturer provided detailed tofu standard of identify recommendations and a methodology for evaluation that consisted of a list of definitions and nutrition standards.

6.5.9.3 Other comments on tofu (or other plant-based protein) as a meat alternate

Approximately 30 submissions addressed allowing tofu or other plant-based proteins to be credited as meat alternates in ways that did not fit into the issue categories discussed above. A few individual commenters asserted that legumes are the healthiest way to get concentrated protein, so they should count as a protein, rather than a vegetable component. A school food service staff member asked USDA to consider allowing legumes to count as the vegetable or meat alternate, but not as both.

A school district and a food service industry company stated that there need to be more options for offering protein servings from foods other than animal products, both to expand cultural and personal choices and advance efforts to reduce total fat, saturated fat, and sodium. Noting that some areas have large populations of non-meat eaters, a couple of school districts commented that they would like to be able to calculate grams of protein for a meat/meat alternative equivalent. They stated that this would allow them to use hummus, soy products, and beans as protein.

A policy advocacy organization wrote at length in favor of plant-based foods such as soy and nuts as protein sources. This commenter argued that plant-based foods are as good a source of protein as animal

protein if eaten in combinations with plant-based foods that supply all of the essential amino acids. Further, this commenter asserted that plant-based sources of protein offer healthy fiber, vitamins, and minerals, as well as other health benefits, without the fat, calories, and cholesterol that come with meat and dairy consumption. To lower the costs of implementing school meals, an agricultural trade association suggested that USDA purchase meat alternates, such as soy butter and veggie burgers, to make a wider variety of foods available to schools under USDA Foods.

An individual commenter argued that the proposed meal patterns should recognize the versatility of nutrient-dense “super-foods” such as quinoa that do not fit easily into any one particular classification (e.g., meat alternate, vegetable). This commenter asserted that quinoa has a nutrient profile better than most vegetables, yet also contains all nine essential amino acids. Another individual commenter suggested that the rule should encourage the use of complete proteins (e.g., brown rice and beans) as a less-expensive alternative to meat products. This commenter also asked USDA to consider reducing the protein percentage rate, which would allow the use of certain nuts as alternatives to meats. An agricultural trade association applauded USDA for including plant-based foods, such as nuts, in the meal patterns for the NSLP/SBP. The association cited several health benefits of nut consumption.

6.5.10 Other comments on meat/meat alternate component

Approximately 575 submissions addressed the meat/meat alternate component in ways that did not fit into the issue categories discussed above.

Weekly But No Daily Requirement for Meats/Meat Alternates

Many commenters recommended making the meat/meat alternate a weekly rather than a daily requirement. Some of these commenters asserted that doing so would give food service staff more flexibility in menu planning and cost control. Others argued it would reduce the consumption of fat and sodium caused by the need to serve a meat/meat alternate each day.

Legumes as a Meat Alternate

A few commenters suggested that USDA should require that the legumes be counted as a protein rather than a vegetable component. A school district asserted that this would encourage the consumption of more plant-based protein. An advocacy organization stated that doing so would offer students more of the foods encouraged in the DGAs and would help reduce saturated fat offered by displacing meat, cheese, and other fatty meat/meat alternates.

A food manufacturer supported the option of including beans and peas as either a vegetable or meat alternate, but it requested the option to split beans or peas between the vegetable and meat alternate groups (e.g. half towards the vegetable calculation and half towards the meat alternate calculation). A State department of education asked USDA to consider allowing legumes to count as the vegetable or meat alternate, but not as both. This commenter stated that requiring legumes once per week as a vegetable is a huge step for many schools. Another State department of education asserted that allowing green peas to count as a meat/meat alternate in the legumes group is inconsistent with the 2010 DGAs, which specify that green peas are not equivalent to a meat alternate.

An advocacy organization requested that USDA clarify when dry beans should be considered a legume versus a meat alternative. This commenter stated that the proposed rule appears to classify dry beans in the legume vegetable subgroup; however, the DGAs state that beans may be considered either a vegetable or a protein. This commenter urged USDA to provide schools with guidance on how to appropriately categorize dry beans as a vegetable or meat alternative to meet the meal pattern requirements.

Processed Meats

Many commenters expressed concern that discouraging the use of processed meats is unnecessary and unduly restrictive. According to these commenters, any restriction on meats is already sufficiently covered in the nutrition standards for calories, fat, and sodium. Further, they stated that “processed

meats” is not a defined term within current regulations or within the proposed rule. They also asserted that the term is inconsistent with existing references in regulations and the Food Buying Guide for Child Nutrition Programs.

A few food manufacturers and trade associations argued that USDA does not need to discourage the use of processed meats, because lower-fat and lower-sodium versions of these products are increasingly available. These commenters asserted that processed meat products still provide high-quality protein and nutrients to a healthy balanced diet for growing children. They also stated that processed meats are affordable and easy to prepare. A school food service staff member and an individual commenter stated that concerns with processed meats are adequately addressed with the fat, calorie, and sodium restrictions. Some commenters argued that the use of raw meats increases the risk of food-borne illness, so processed meats decrease food safety concerns. A school food service staff member and a religious organization asserted that it is much safer and faster to utilize a pre-cooked item than to defrost and cook raw items when you may not have the personnel present to prepare the item. Two food service staff member stated that the use of raw meats would require a complete and comprehensive overhaul of its Hazard Analysis and Critical Control Point (HACCP) Program and complete training and retraining of safe food handling. A school district suggested that USDA endorse some type of system to encourage manufacturers to revise formulations rather than prohibit the use of all processed meats.

In contrast, a State department of education recommended that USDA restrict the number of times per week that processed meats could be offered, because, as currently produced, this commenter stated that processed meats are normally high in sodium and fat. Another State department of education stated that it agrees with the limited use of processed meats. An academic commenter and an individual commenter recommended that USDA prohibit serving of all processed meat.

Several commenters asked USDA to include a clear definition of processed meats in the final rule. A food manufacturer urged USDA to develop a fair, balanced, and science-based definition of “processed foods” when finalizing the revised requirements. This commenter referenced the definition of processed foods used in the glossary of the report of the Dietary Guidelines Advisory Committee. Another food manufacturer requested clarification as to the definition of processed meats and lean meat/meat alternates. This commenter asked whether the definitions would be consistent with current USDA/Food Safety and Inspection Service (FSIS) labeling and nutritional labeling regulations.

Serving Sizes

A few commenters stated that the proposed rule would require a wider range of portion sizes, which would increase costs of production and distribution.

Dairy Products as Protein Sources

A few food manufacturers and dairy trade associations argued that USDA should allow more forms of yogurt (e.g., drinkable yogurt) to count as a meat alternate. Two trade associations said that drinkable yogurt meets the standard of identity for yogurt, and that the proposed parallel definition of the meat/meat alternate component for the preschool meal patterns does not exclude drinkable yogurt. One company said that there are many yogurt products on the market that do not meet the yogurt standard of identity solely due to the addition of vitamins and/or minerals.

A professional association recommended that USDA only allow low-fat or fat-free yogurt products, as is required with milk. An individual commenter suggested that USDA allow only yogurt that is plain or sweetened naturally with fruit. A nutrition professional stated that the proposed wording of the yogurt section is confusing and that yogurt-based smoothies should be allowed as part of a reimbursable meal. This commenter asserted that schools could standardize a recipe for smoothies as easily as they could for soup.

Two trade associations suggested that USDA consider reducing the serving size requirement for cheese from 2.0 to 1.5 oz., while permitting the same protein credit. One trade association argued that this would encourage consumption of beneficial nutrients while facilitating the fulfillment of the new nutrition standards for meals.

One dairy trade association said that because the 2010 DGAs recommended an additional half serving of milk and milk products for children between the ages of four and eight years, the school meal programs should include additional varieties of dairy choices to encourage increased consumption of these products. This commenter recommended that USDA educate school food service directors about the options available for school meals and how reduced-fat and full-fat versions of cheese could fit into school meals. This commenter also recommended that USDA include only reduced-fat and light cheese varieties in the commodity purchases for school meals. This trade association encouraged USDA to increase the varieties and forms of reduced-fat and light cheese that are available and to work with schools to develop new entrees that would use these cheeses.

A school district and an individual commenter suggested that USDA allow the protein in milk to be counted toward the meat/meat alternate requirement, at least at breakfast. An individual commenter said that counting cheese as a meat alternate seems to run counter to the goals of lowering consumption of saturated fats and cholesterol.

Egg Whites

A food manufacturer stated that egg whites meet all of the requirements for qualified meat alternate or alternate protein products and asked USDA credit all forms of egg whites as meat alternates or alternate protein products.

Lean Meats and Meat Alternates

Several commenters asserted that USDA should more explicitly encourage schools to use lean or extra-lean meats and meat alternates. These commenters stated that the proposed rule had little discussion of the distinction among the various kinds of proteins, unlike the recognition of the relative value of various kinds of carbohydrates. A couple of these commenters, including an advocacy organization, asserted that the proposed rule leaves it to schools to recognize the connection between the saturated fat and trans fat standards and the need to serve lean or extra lean meats.

6.6 Fluid milk meal component

6.6.1 General support

Approximately 55 submissions expressed general support for the proposed fluid milk meal component. Many of these commenters noted that the proposed requirements for the milk component are consistent with the recommendations of the IOM and the 2010 DGAs, which recommend that children, adolescents, and adults consume fat-free or low-fat milk or milk products. An advocacy association and a professional association cited statistics that they stated show higher-fat and flavored milks have been commonly offered as part of the school meal at public schools participating in the NSLP.

Two farming trade associations supported continuing to require milk in all school meals. These commenters noted that because of the nutritional benefits of milk consumption, the DGAs call for increasing consumption of low-fat or fat-free milk and milk products. One trade association cited a finding that 85 percent of Americans do not meet the recommendations for dairy foods, while the other stated that Americans consume less than 60 percent of the recommended intake for dairy foods.

6.6.2 General opposition

Approximately 80 submissions expressed general opposition to the proposed fluid milk meal component. Many of these commenters argued that by limiting choices of flavored and unflavored milk, the proposed rule would result in reduced milk consumption by students and would make it less likely that

students obtain the recommended amount of calcium. Similarly, a large metropolitan school district stated that USDA should take a position on added sugars in flavored milk rather than focus on milk fat content. A school board opposed the proposed milk component requirements because it stated that the shelf life for 1% or non-fat milk is less than that for 2% or whole milk. This commenter also stated that many school systems do not have adequate storage to receive milk deliveries as would be needed with the proposed regulation.

An academic commenter and an individual commenter stated that milk is an unnecessary item in school lunches, because the nutrients in milk can be attained through various other sources that do not require increasing amounts of sugar to make it appealing to children. Regarding calcium, one of these commenters stated that calcium requirements can be met by inclusion of calcium-rich fruits like oranges, leafy greens, beans, and fortified orange juice. Regarding vitamin D, this commenter stated that the best source is brief daily exposure to sunlight. This commenter suggested that plain white milk should only be an optional item on school menus.

6.6.3 Milk fat content

6.6.3.1 Support only offering fat-free or low-fat (1%)

Approximately 54,300 submissions supported the proposal to require schools to only offer fat-free or low-fat (1%) milk. These commenters included schools and school districts, food service staff, public employee unions, State education and health agencies, and advocacy organizations. Many of these commenters stated the proposed standard is consistent with the recommendations of the IOM and the 2010 DGAs and would help students to avoid consuming excess calories and excess saturated fat. Some commenters stated that many schools have already implemented this requirement and are only offering fat-free or low-fat milk.

6.6.3.2 Higher fat (2%, whole) milk should be permitted

Approximately 60 submissions recommended that the fluid milk component should permit higher-fat milk, including four school food service staff members. One school food service staff member stated that higher-fat milk should be allowed because children need these fats “to cushion their nervous systems and build healthy brains” and that reducing fat content too much would be a detriment to children’s health. Another school food service member stated that higher-fat milk should be allowed because not all students are overweight. A third school food service staff member stated that that 2% milk should be allowed because the amount of fat in either 1% or 2% milk is minute when compared to all of the fat in fast foods that many children are consuming. This commenter added that the fat content in milk helps fill children and sustain them for longer periods during the day. Another school food service staff member stated that 2% unflavored milk should be allowed when flavored milk is not offered. Another commenter suggested that high school students should have the ability to choose a higher fat milk, but that younger students could be restricted to low-fat or skim milk.

6.6.3.3 Other comments on milk fat content

Approximately 30 submissions addressed fat content in milk in other ways. Two individual commenters suggested that USDA should allow only fat-free milk (flavored or unflavored), with one saying such a restriction would contribute to the reduction of saturated fats. In contrast, a trade association and a school food service staff member stated that dietary fat is necessary for the absorption of fat-soluble vitamins found in milk (vitamins A and D). A school food service staff member was concerned about the availability of 1% unflavored milk, and a State department of community health stated that not all parts of the country have access to flavored fat-free milk.

6.6.4 Flavored milk

6.6.4.1 Support allowing only non-fat flavored milk

Approximately 245 submissions supported allowing only non-fat flavored milk. Many of these commenters stated that the proposed provision is consistent with the recommendations of the IOM and the 2010 DGAs. These commenters asserted that because the higher fat milks contribute to the saturated fat and caloric intake of children, this limitation helps achieve the lower levels required for saturated fat and calories. Several commenters stated that schools have already limited flavored milk to non-fat, and student acceptability has been good.

While supporting the proposed provision, a few of these commenters addressed the question of added sugar content in flavored milk. An association of nutrition professionals stated it agreed with USDA that the proposed calorie maximum would drive schools to select flavored fat-free milk with the lowest sugar content. An advocacy organization stated that after implementation of the final rule, USDA should assess schools' selection of flavored milks, and, if necessary, provide additional advice about procuring flavored milk with lower amounts of added sugars. A State department of education simply suggested that USDA consider restricting added sugar in flavored milk.

6.6.4.2 All flavored milk should be prohibited

Approximately 120 submissions argued that all flavored milk should be prohibited. An advocacy organization stated that a gradual reduction of flavored milk in school is one way to limit added sugar content in school meals, and that it would also help maintain consistency in the nutrition messaging as a child transitions from child care to elementary school. This organization also noted that California has recently enacted legislation (AB) that eliminates sugar sweetened beverages, like flavored milk, from all licensed child care homes and centers. An individual commenter stated that outright bans on chocolate milk have already been put in place in District of Columbia, parts of California, and is being considered in New York and Florida.

An individual commenter supported a ban on flavored milk, asserting that the primary health danger posed by flavored milks is their high sugar content. This commenter also stated that growing scientific consensus suggests that the proposed rule's emphasis on reducing fat instead of sugars may be misplaced. Another individual stated that flavored milk products "feed a sweet tooth" that ultimately would lead to even more sugar consumption outside of the school day. This commenter stated that banning flavored milk would be consistent with DGAs, which recommend limiting such discretionary sugar intake. One company stated that USDA and schools should promote the taste and nutrition of fat-free milk without added sugars, and this would support recommendations for limiting added sugars from foods and beverage. One individual commenter stated that if children stop drinking milk because it is unflavored, there are alternative sources of calcium, such as yogurt flavored with fruit or green leafy vegetables.

6.6.4.3 All flavored milk should be permitted

Approximately 120 submissions suggested that more flavored milk should be permitted. A State school nutrition association opposed a complete ban on flavored milk. According to this commenter, many leading health and nutrition organizations recognize the role that flavored milk plays in helping children consume three daily servings of milk. This association stated that a complete ban on flavored milk could further discourage milk consumption, and it noted that Connecticut has reported a 60 percent decline in student milk consumption when flavored milk was removed from schools. Similarly, according to this commenter, Huntington, WV, saw a 25 percent drop in milk consumption when flavored milk was eliminated. The association stated that instead of banning flavored milk, more work should be done to reduce the amount of sugar in flavored milk over time to an acceptable level. A school food service staff member thanked USDA for keeping flavored milk as an option and stated that flavored milk provides essential nutrients that would not be consumed in many students' diets if the only choice is white milk.

6.6.4.4 Reduced fat flavored milk should be permitted

Approximately 215 submissions stated that USDA should allow serving of low-fat (1% or ½ %) flavored milk. Many of these commenters cited a lack of availability of fat-free flavored milk. Other commenters

were concerned that poor student acceptability of fat-free flavored milk would result in decreased milk consumption or participation in school meals. Some commenters stated that it is more important that students drink milk, even if it is flavored, so that they are able to reap the nutritional benefits of milk in their diets. Other commenters favored low-fat flavored milk because non-fat flavored milk has added sugar and other substances like gelatin or starches to make it taste acceptable without the addition of any artificial sweeteners.

Some commenters stated that the amount of extra calories and fat in low-fat milk is not significant enough to warrant the expenses of changing to non-fat flavored milk. A school district and a nutrition professional stated that studies have shown that children who drink flavored milk consume more calcium and other nutrients – and no more sugar – than children who did not consume flavored milk. They also had Body Mass Indexes (BMIs) that were equal to or lower than other children their age. Similarly, commenters cited research showing that low-fat milk (1% or ½%) is not a major source of solid fat for 2-18 year olds.

A national dairy trade association stated that flavored milk contributes only 2-3% of added sugars to the diets of children and adolescents, which it called an acceptable trade-off for the extensive nutrient contribution flavored milk provides. This commenter endorsed setting a calorie limit on flavored milk of 150 calories per eight-ounce serving, asserting that this would provide schools the flexibility to procure milk products that maintain high levels of acceptability and nutrient intake, while also assuring that flavored milk fits within overall calorie limits for meals. Further, this association stated that many milk processors are already meeting this proposed limit with products that have demonstrated acceptability among students across the country.

A few commenters stated that if USDA is going to allow only fat-free flavored milk, it should phase in the requirement over two years to allow for the dairy industry to respond to the requirement. A few commenters asked that fat-free milk be labeled as “non-fat” rather than “skim” due to negative perceptions of the term “skim” among some children.

6.6.4.5 Other comments on flavored milk

Approximately 255 submissions addressed flavored milk in ways that did not fit into the issue categories above. Some of these commenters expressed concern about the availability of fat-free flavored milk in the timeframe that would be required by the proposed rule. A few of these commenters suggested a longer implementation timeline or a phase-in of the requirement for fat-free flavored milk, such as temporarily allowing ½% flavored milk, which is currently available. A school food service staff member stated that allowing only non-fat flavored milk would restrict the availability of flavored milk due to the limited amount of dairies producing non-fat flavored milk options for schools.

Other commenters suggested that USDA set a maximum level of sugar in flavored milk in addition to (or rather than) requiring only fat-free flavored milk. A State department of education suggested that USDA could set limits on added sugar in flavored milk, as California has done (28 grams of total sugar per eight ounce serving). A State department of community health recommended a sugar standard of 22 grams of total sugars per 8 ounces for flavored milks. A national health advocacy organization stated that milk should be limited to fat-free and low-fat varieties with no more than 130 calories per eight ounce serving. Two dairy trade associations recommended establishment of a calorie limit on flavored milk of 150 calories per eight-ounce serving.

A dairy trade association stated that requiring fat-free milk would likely increase the cost to schools of flavored milk, because it will require spending more on ingredients related to taste, mouth-feel, and other sensory properties. Similarly, a school district stated that it is planning to change to fat-free flavored milk, but it would not see any cost savings because it is also asking that the milk be sweetened with sugar rather than high fructose corn syrup and be lower in overall sugar than its current low fat flavored milk.

Several commenters recommended that USDA provide technical assistance to schools to select from the available suppliers to offer flavored milk that contains the lowest amount of added sugars. Some of these commenters also stated that USDA should identify and promote industry best practices for reducing added sugars in flavored milk.

6.6.5 Must offer at least two fluid milk options

6.6.5.1 Support

No submissions expressed this view.

6.6.5.2 More fluid milk options should be offered

No submissions expressed this view.

6.6.5.3 Fewer fluid milk options should be offered

A school food service staff member approved of removing the current requirement that milk be offered in a variety of fat contents. This commenter stated that this would be a positive step forward for schools that have been willing and able to offer only fat-free milk.

6.6.5.4 Other

Approximately 40 submissions provided other comments on the proposed provisions regarding the number of milk options that schools must offer. Two school boards asked if the two required milk options refer to two types of fat levels or flavored/unflavored. A State department of education asked USDA to clarify whether schools must offer two milk choices at each meal or over the week. This commenter also asked if the two choices could be skim unflavored and skim flavored milk.

6.6.6 Comments on milk substitutes (e.g., soy milk) (not part of proposal)

6.6.6.1 Requirements for milk substitutes should be more lenient

Approximately 50 submissions suggested that the requirements for milk substitutes should be more lenient. In general, these commenters argued that milk substitutes are as healthy, or healthier than milk, and that students are increasingly asking for milk substitutes. Some of these commenters stated that non-dairy beverages should be offered at every meal to accommodate the needs of lactose-intolerant students, many of whom are minorities. An animal-rights advocacy organization stated that milk substitutes should be offered daily to accommodate vegan and vegetarian students.

A few commenters stated that USDA should lift the current requirement for students to provide parental permission for the substitution of liquid milk. A soy trade association requested that USDA not apply a fat limitation to fluid milk substitutes. This commenter stated that even though soymilk naturally contains about 3.5 grams of fat, it is predominantly unsaturated fat with less than 0.5 gm of saturated fat per 8 ounces. This association also stated that USDA should continue to permit flavored soymilk that meets the USDA nutritional standards for alternatives to dairy milk, especially since the amount of sugar in flavored soymilk is significantly less and the calories are comparable to flavored fat-free milk.

One individual suggested a slight downward adjustment of the protein requirement since most of the readily available nondairy milk alternatives do not quite meet the nutritional requirement for protein. One city public health department suggested that beverage service could incorporate an offer versus serve option, in which students could choose to take just water or milk, or both water and milk. In a similar vein, a community organization asked USDA to allow meal reimbursement without milk (water as replacement) for at least one meal a day. A few other commenters noted that milk contains naturally occurring sodium, so allowing water to replace milk in a reimbursable meal would make it easier to meet the proposed sodium requirements.

An advocacy organization and a municipal department of health encouraged USDA to offer additional guidance on the crediting of lactose-free and soy-based milks. These commenters stated that many school

food service personnel lack the knowledge that both lactose-free and soy-milks that meet the dietary requirements are reimbursable under the school breakfast and lunch programs.

6.6.6.2 Requirements for milk substitutes should be more stringent

Approximately 205 submissions suggested that the requirements for milk substitutes should be more stringent. Two dairy trade associations stated that the existing regulations require milk substitutes to be nutritionally equivalent to whole milk, since that was the “least nutritious” option permitted at the time existing regulations on milk substitutes were established. These two commenters argued that because the proposed rule would allow only low-fat and fat-free milk to be served in schools, USDA should require milk substitutes to be nutritionally equivalent to low-fat milk. These commenters asserted that this change would provide students drinking milk substitutes with higher levels of calcium, magnesium, phosphorous, and potassium than are currently required.

6.6.6.3 Other comments on milk substitutes

Approximately 80 submissions addressed other topics relating to milk substitutes. In two separate submissions, an individual commenter stated that introducing milk substitutes such as yogurt, cheese, and soymilk would add variety and accommodate children who are not able to consume milk (vegans, lactose intolerant). A food policy advocacy organization stated that schools must provide milk alternates for children with allergies or lactose intolerance. An individual commenter argued that the NSLP and SBP should facilitate the availability of healthful milk alternatives, particularly fortified ones that provide protein, calcium, and Vitamin D without the cholesterol or saturated fats in dairy milk.

6.6.7 Other comments on fluid milk component requirements

Approximately 165 submissions offered other comments on the proposed requirements for the fluid milk meal component. Several of these commenters, including a school advocacy organization, were concerned that the flavored non-fat milk and unflavored low-fat (1%) milk would not be available in sufficient supplies in all regions of the country. These commenters urged USDA to recognize these regional limitations and to work with schools regarding implementation of the proposed milk component requirements. An academic commenter stated that schools should be able to request a waiver from the requirement to offer a variety of milk if they can successfully serve only fat free unflavored milk. One company stated that if USDA would write the final rule in such a way that waivers from meal pattern requirements are possible, regions without adequate product mix could be approved to deviate from the proposed milk requirement.

A few commenters recommended that schools be allowed to offer different servings of milk based on age/grade. An individual commenter stated that serving 8 oz. servings to K-5 students results in “a lot of milk in the trash bins.” A school food service staff member disagreed with limiting milk to 8 oz. at secondary schools.

A few commenters, including a large metropolitan school district and an individual commenter, supported allowing water to be part of a reimbursable meal in place of milk. Some of these commenters stated that this would help schools meet the proposed sodium requirements, because milk has naturally occurring sodium.

A school food service staff member stated that the provision for accommodating milk allergies needs to be more reasonable. This commenter claimed that USDA is mandating a product that the school does not have available to purchase. A school food service staff member and an individual commenter stated that the proposed offer versus serve provisions would result in children receiving both juice and milk and that children almost always drink juice before milk if given both at the same time.

6.7 Miscellaneous meal pattern issues

6.7.1 Having a plant-based reimbursable meal option available (no such proposed requirement)

6.7.1.1 Support

Approximately 300 submissions supported having a plant-based (vegetarian and/or vegan) reimbursable meal option available. An individual commenter noted that most vegetarians are limited in their food choices at school and stated that the NSLP/SBP changes in proposed rule could be a way to introduce more menu diversity for vegetarians, vegans and culturally diverse populations. Another individual commenter urged FNS to require that schools provide at least one vegan meal choice at every meal. Similarly, an academic commenter stated that USDA must consider the special dietary needs of students who do not eat meat or certain kinds of meat or dairy products for religious, moral, or ethical reasons and concluded that the regulation should mandate a daily vegetarian option. This commenter also suggested schools to be required to label all vegetarian and vegan meal options. This commenter included research that it stated supports the benefits of a plant based diets. An individual commenter asserted that the statistics on lactose intolerance and the need for vegan children to have suitable school lunch choices should be taken into account in the rule's "Civil Rights Impact Analysis" in light of allowing schools to offer healthful beverage alternatives to milk as part of the reimbursable meal.

A policy advocacy organization was concerned that the absence of tofu and the restrictions on non-dairy milk products within the proposed rule may prevent vegetarian and vegan children from participating in the NSLP and SBP programs. An academic commenter agreed and argued that schools should receive credit for non-dairy milk and that the meat requirement should be changed to a daily or weekly protein requirement. Several other commenters encouraged the movement of the NSLP/SBP to more plant-based offerings. A few commenters commented that offering more vegetarian options could increase vegetable intake.

Commenters stated that legumes and tofu are healthy proteins which would bring the cholesterol and saturated fat content of a meal down and the fiber content up. An advocacy organization stated that plant-based food alternatives offer similar benefits but less health risks than a meat and dairy based diet. Advocacy organizations stated that the recently published 2010 DGAs makes a clear case for the health benefits of a vegetarian diet. One advocacy organization suggested that current meal plans should be revised to reflect the inclusion of protein foods subgroups such as beans, nuts, seeds, and soy products.

6.7.1.2 Oppose

Approximately two individual commenters expressed opposition to animal rights groups' comments that encouraged the NSLP/SBP to include more vegetarian/vegan food options, arguing that animal-based products are necessary for proper child nutrition, and too much soy is unhealthy for children.

6.7.1.3 Other comments on plant-based reimbursable meal option

No submissions addressed this issue.

6.7.2 Allow flexibility in meal patterns for non-traditional settings (classroom meals, Grab & Go)

Approximately 270 submissions addressed meal patterns for non-traditional settings. Generally, commenters that addressed this topic expressed concerned about how the proposed rule would impact the flexibility in meal patterns within non-traditional settings. An advocacy organization and other commenters urged USDA to provide flexibility for schools offering different breakfast options and to work with the State Agencies to find feasible solutions for schools that ensure basic elements of the meal requirements are maintained in these non-traditional settings. An individual commenter wanted to see the "grab and go" breakfast program to be monitored and stated that these programs should be required to include whole grains and fruits. Several commenters, including a professional association, a food service industry member, and a school food service staff member, recommended that USDA allow SFAs to apply for a waiver for modified meal plans for non-traditional meal settings.

Some commenters were concerned that the breakfast food requirements would have a negative effect on school breakfast programs. Commenters argued that the additional protein requirement would be a hardship on schools that serve breakfast in the classroom. School districts and other commenters expressed concern that juice being counted as half the fruit serving would “destroy” the cafeterias that offer the “grab and go” breakfast and breakfast in the classroom. A school district stated that packaging the increased food in a “grab and go” system would be problematic and that for schools that offer breakfast in the classroom the increased waste would be a challenge for school staff members. An advocacy organization, a food service industry company, and school districts stated the schools that offer breakfast in the classroom would face increased costs and logistical issues in meeting the 1 cup of fruit/vegetable requirement. One school food service staff member commented that the increased fruit requirement will require more time for students to eat, while some teachers already feel that the breakfast in the classroom program is taking time out of instruction. A trade association also noted that packaging the increased food in a “grab and go” system may be problematic.

A State department of public instruction and an individual commenter stated the “breakfast in the classroom” is the most efficient and cost effective means of providing breakfast at school for as many students as possible and was concerned that the new food requirements would result in increased costs and logistical issues in serving in a unique setting. An individual commenter expressed concern about the logistics of pre-packing meals for the “grab and go” program and the breakfast in the classroom program under the proposed rule. This commenter was concerned that schools would need to purchase larger bags and would need to package the hot meat/meat alternate hot from the rest of the cold items.

An academic commenter stated that schools in New York State that operate breakfast in the classroom have two to three times higher participation rates than schools that serve breakfast in a more traditional manner. A food manufacturer stated that breakfast is important to student achievement and that breakfast on-the-go is a proven way to increase student participation in the SBP. This commenter urged USDA to ensure that the final rule would not have a negative impact on schools’ ability to offer more on-the-go options.

A school food service staff member was concerned that the new meal requirements would negatively impact their ability to make meals at their pre-plate satellite meal facility. This commenter explained that they have a central kitchen production line where they pre-package meals daily ship them to schools to be heated and served. This commenter was concerned that their facility would not be able to handle the increased volume of vegetables the proposed rule requires. Similarly, a school district expressed concern that schools might not have the necessary refrigerated or dry storage to sustain the proposed fruit requirement increase in their current delivery model. A school food service staff member also suggested that the fruit/vegetable serving requirement be reduced to 4 oz for after school snacks.

6.7.3 Other comments on proposed meal pattern changes

Approximately 370 submissions addressed other topics relating to the proposed meal pattern changes. Some commenters expressed general support for the proposed meal pattern changes for lunch and breakfast. An individual commenter suggested that FNS specify methods of food preparation and serving. This commenter suggested that FNS require a minimum number of whole foods to be included in each meal, and that FNS create guidelines on the preparation of food.

A school district expressed concern that the proposed meal pattern requirements would reduce canned vegetables and increase fresh and frozen vegetables, and that this may increase waste because of the limited time fresh and frozen vegetables can be kept without going bad. An individual commenter was concerned that the proposed meal pattern requirements would decrease the amount of carbohydrates and protein in a student’s lunch and was concerned this would negatively impact student athlete performance.

A school district stated that the menu pattern is confusing and needs to be simplified so that it is easily understood by staff, students and directors. A school, a State department of education, and other

commenters requested that the meal pattern table be changed to indicate servings rather than cups. A company stated that the proposed meal pattern chart on page 6 of the proposed rule needs to be revised. This commenter gave examples of where the chart was confusing and offered suggestion on how it could be revised.

An advocacy group supported the proposed changes to the SBP given the large role that breakfast can play in a child's health and development. However, an individual commenter urged FNS to maintain the current breakfast meal pattern, stating that it is providing adequate portions that are filling students up with minimal plate waste. An individual commenter asserted that the new breakfast meal pattern rules out many of the popular breakfast items and concluded that it would be difficult for schools to create breakfast meals that are well received with the students and easy to eat on the go, without becoming repetitive.

Commenters asserted that the proposed meal pattern requirements are complex because of the daily and weekly requirements. These commenters requested that the requirements be either daily or weekly but not both. A school food service staff member stated that the proposal was unclear on how a menu planner determines if the meat/bread/vegetable components are met on a weekly and daily basis when choices are used. A school food service staff member argued that preventing schools from serving "food items of minimal nutritional value" would only make them more attractive to students and that there should be room in every meal plan for "treats."

7. Proposed nutrition standards

7.1 Calories

7.1.1 General support of proposed calorie standards

Approximately 155 submissions expressed general support for the proposed calorie levels or encouraged setting minimum and maximum calorie limits. Some commenters, including an individual commenter, an industry association, advocacy organizations, a professional association, a food bank, a county educational department, a municipal public health department, also supported the approach to limit calories by the proposed age/group divisions. Many of these commenters asserted that limiting high calorie foods would increase children's consumption of nutrient-dense foods, such as fruits, vegetables and whole grains.

Several commenters, including food banks, advocacy organizations, a trade association, a professional association, and a community organization, argued that establishing a minimum and maximum level for calories would address concerns about food insecurity and obesity. A school food service staff member supported the calorie ranges as opposed to a calorie target, which could often seem too high. An industry association asserted that the minimum and maximum limits on calories would reduce the added sugars some schools include in recipes in order to meet calorie requirements. An advocacy organization added that a reduction in caloric intake would also contribute to reducing children's sodium intake.

An academic commenter expressed the need for guidance regarding how to implement the proposed standards when serving several grades at the same time. Advocacy organizations, a trade association, a professional association, and a food bank added that the proposed calorie ranges align with the DRIs.

7.1.2 General opposition of proposed calorie standards

Approximately 60 submissions expressed general opposition to the proposed calorie limitations. Of these commenters, a nutrition professional listed several reasons why the proposed limits would not be a practical solution to the childhood obesity epidemic. This commenter's reasons included the difference in children's physical activity levels, proposed removal of nutrient analysis of menus preventing accurate identification of calories in recipes, and economical incentive for schools to serve similar portion sizes due to cost savings when buying food in bulk. This commenter also argued that the proposed calorie levels would not have an impact on childhood obesity because competitive foods, largely low-nutrient but energy dense foods, are not strictly regulated, and would continue to be purchased.

An individual commenter asserted that although the calorie restrictions would reduce a child's calorie intake at school, the limitations would not affect the child's overall calorie intake unless foods offered at home were also low in calorie. A trade association suggested displaying nutritional information instead of limiting calories, so individuals could make their own decision regarding which foods to consume. Further, a food service industry asserted that the proposed calorie levels would be difficult for schools to adhere to due to limited access to computerized meal planning. This commenter stated that the proposed age/grade groupings do not include schools that split grades from K-6 and 7-8. A school district expressed similar concern regarding splitting calories between age/group where age or grades are intermingled.

7.1.3 Proposed minimum calorie levels

7.1.3.1 Support proposed minimum calorie levels

No submissions expressed this view.

7.1.3.2 Minimum calorie levels should be higher

No submissions expressed this view.

7.1.3.3 Minimum calorie levels should be lower

Approximately eight submissions suggested lowering the minimum calorie levels. A school recommended a minimum calorie level of 700 for grades nine through 12, changing the overall range of calories for these grades to 700-850 calories. This commenter argued that the proposed minimum calorie level is too high for female high school student in particular, who require fewer calories, and because physical education in high school is often an option, so many students are not active enough for the proposed minimum calorie level.

7.1.3.4 Other comments in opposition to proposed minimum calorie levels

Approximately 60 submissions addressed other topics relating to the proposed minimum calorie levels. An individual commenter asserted that the proposed calorie levels are too low for high school students.

7.1.3.5 Other comments on minimum calorie levels

A county department of education suggested that the minimum calorie limit be removed and replaced with "portion specifications" instead.

7.1.4 Proposed maximum calorie levels

7.1.4.1 Support of proposed maximum calorie levels

Approximately 70 submissions, which include a superintendent, a school district, school food service staff, a food service industry company, a professional association, advocacy organizations, expressed general support of the proposed maximum calorie levels and the potential effect it would have on reducing obesity rates in children.

7.1.4.2 Maximum calorie levels should be higher

Approximately 20 submissions suggested that the maximum calorie limits should be higher. A school district argued that increasing the maximum calorie level would allow for more flexibility and acceptance by students.

7.1.4.3 Maximum calorie levels should be lower

Approximately six submissions suggested that the maximum calorie levels for lunch be lower. A social organization suggested that the calorie limit for lunch should be between 450-500 calories.

7.1.4.4 Other comments in opposition to proposed maximum calorie levels

Approximately 80 submissions expressed opposition to the use of maximum calorie levels. A school food service staff member expressed concern regarding the maximum calorie levels not being adequate to meet the dietary needs of taller and active students. In support of their position, this commenter provided a graph indicating calorie needs depending on the vary levels of activity for students. Another school food service staff member suggested removing the maximum calorie limit for elementary and secondary meal patterns because it is too restrictive. Other commenters asserted that setting maximum calories does not allow children with high calorie needs, e.g., children suffering from food insecurity at home, to ask for more food and satisfy their hunger at school.

7.1.4.5 Other comments on maximum calorie levels

Approximately six submissions addressed the maximum calorie levels without explicitly expressing either support or opposition. A school district and school food service staff member expressed concern regarding adherence to the proposed maximum calorie levels during breakfast in addition to the requirements for increases in fruits, grains, and meat or meat alternatives. Similarly, a State department of education expressed concern regarding exceeding the K-5 lunch calorie limit while at attempting to meet the daily meal pattern requirements. An individual commenter asserted that the age/grade grouping does not meet the calorie requirements of students who play sports. A city department of education suggested that the maximum calorie levels be grouped for grades K-12 with a maximum of 600 calories for breakfast and 750 calories for lunch.

7.1.5 Support allowing solid fats and added sugars if within the four dietary specifications

7.1.5.1 Set limits on added sugars

Approximately 60 submissions suggested adopting a limit on added sugars in school meals in order to maintain the goal of providing nutritious meals for school children. An individual commenter and an advocacy organization suggested that although the DGAs only advise limiting sugar intake, FNS should provide limits on added sugars. Other individual commenters expressed the need for added sugar limits to encourage healthier lifestyles for children and decreasing the increase prevalence in childhood diabetes.

Several commenters provided suggested areas of limiting added sugars in school meals. An individual commenter suggested using sugar-free products instead of conducting costly research to provide evidence of high sugar intake levels of children. A city department of health requested that USDA provide guidance on the use and limitation of artificial sweeteners. Several commenters, including school food service staff, advocacy organizations, professional associations, and a community organization, suggested placing limitations on sweetened grains, dairy-based desserts, ready-to-eat cereals, and flavored milk.

An advocacy organization suggested the following limits to added sugars: portions of grain-based desserts and dairy-based desserts limited to no more than two servings a week, one ounce of cookies, two ounces for cereal bars as well as bakery items, and four ounces for dairy-based desserts. An industry association suggested limiting milk portions to 150 calories or less per serving.

A few commenters, including an advocacy organization, suggested adopting the World Health Organization's (WHO) recommendation of limited added sugars to "no more than 10 percent of a person's daily caloric intake." Based on a comparison of WHO recommendations and the proposed

age/group for caloric intake, an academic commenter suggested that K-5 students be limited to no more than 50 calories of added sugars at breakfast.

Advocacy organizations and a professional association of health nutrition directors suggested adopting the Special Supplemental Nutrition program for Women, Infants and Children (WIC) breakfast standards, which sets the added sugar limits to no more than six grams of sugars per one ounce of dry cereal. An advocacy organization suggested following the Child and Adult Care Food Program's (CACFP) weekly guideline of allowing one grain-based desert as a grain component.

7.1.5.2 Set limits on solid fats

No submissions addressed this issue.

7.1.5.3 Other comments or concerns about solid fats and added sugars

Approximately 10 submissions addressed solid fats and added sugars in ways not otherwise addressed above. Advocacy organizations suggested that USDA work with the FDA to separately list added sugars on nutrition labels. However, another advocacy organization suggested USDA implement total sugar or calories instead of an added sugar limit because food manufacturers are not required to report added sugars on nutrition labels.

7.1.6 Other comments on calorie requirements in general

Approximately 395 submissions addressed the proposed calorie requirements in ways that do not fit into the issue categories above. A school district recommended that decisions regarding calorie limits be left to SFAs, and that the calorie limitation be removed. To avoid confusion regarding guidance on increasing calories by adding solid fats and sugars, a nutrition professional suggested changing footnote h under the NSLP meal pattern chart and footnote g under the SBP meal pattern chart to the following, “

Discretionary sources of calories may be added to the meal patterns by offering more foods, or offering higher calorie forms of foods (those that contain solid fats and added sugars).” Two school food service staff members suggested that with the increase in fruit, vegetables, milk and lean meats, it would be difficult for schools not to exceed the set calorie requirements. An individual commenter stated that calories at breakfast would increase under the proposed additional requirements for fruit, bread, and meat/meat alternate. Some commenters, including school districts, school food service staff, and a State department of education, asserted that school meal program calorie levels must remain adequate enough to support children who may not have access to sufficient calories outside of school.

A professional association of child nutrition directors and a school noted that their schools do not have the same age/group divisions proposed by USDA. These commenters stated that in order to comply with the proposed age/group divisions there would be an increase in labor and food costs when schools redevelop group specific menus to meet USDA's proposed age/groups. An individual commenter suggested splitting the age ranges because younger children tend to waste food they do not need. This commenter proposed splitting the K-5 group into two, K-1 and 2-5 groups.

Some commenters asked for guidance regarding how to incorporate the new calorie range proposal into meal planning, and expressed concern regarding their ability to assess the minimum and maximum calorie limitations in the absence of the nutritional analysis.

An industry association suggested incorporating mushrooms into school menus as a low calorie food. A member of a State school nutrition association suggested developing calorie ranges by week instead of by day. An individual commenter expressed concern regarding the need for flexibility for discretionary calories.

An academic commenter suggested that the proposed rule include guidance on condiments with regards to weekly maximum calories. An advocacy organization suggested that the calorie ranges be reviewed after implementation, to determine adequacy.

7.2 Total Fat

Although not discussed in the proposed rule, approximately 30 submissions commented on the potential for total fat limitations. An individual commenter suggested that controlling total fat through calories and saturated fats would be a challenge for small schools where nutritional knowledge is limited. Another individual commenter suggested promoting mono and poly fats. A school food service staff member and an individual commenter suggested that fat is necessary for essential body functions and should not be too limited. An individual commenter asserted that the NSLP does not meet the DGAs 25-35 total fat percentage from calories recommendation.

7.3 Saturated fat

7.3.1 Support proposed limit on saturated fats (less than 10 percent of total calories)

Approximately 20,265 submissions, which include individual commenters, food banks, advocacy organizations, school districts, school food service staff, a health care professional, professional associations, food manufacturers, trade associations, community organizations, State and city health departments, State children nutrition units, and State departments of education, expressed general support for limiting saturated fat.

Approximately 30 additional submissions, including individual commenters, advocacy organizations, a professional association, school food service staff, food banks, and food manufacturers, specifically stated they were in agreement with the proposal to retain the DGA's saturated fat recommendations of 10 percent of calories from saturated fats.

A professional association suggested that because most foods and food product labels contain macronutrient information, daily tracking, instead of weekly averaging of saturated fat would not be an added burden to school food service employees. A food manufacturer noted that it would not support lowering saturated fat limits to less than 7 percent of calories, as recommended by the 2010 Dietary Guidelines for Americans Committee. An advocacy organization expressed support of the IOM recommendation to include unsaturated oils in place of saturated fats when possible.

7.3.2 Saturated fat limit should be more restrictive

Approximately five submissions commented that the proposed saturated fat limit should be more restrictive. A health care professional, an academic commenter, and an advocacy organization suggested implementing the DGA recommendation for saturated fat (less than 7 percent of total calories). A health care professional suggested the DGA recommendation be implemented in a phase-in plan over three years.

7.3.3 Saturated fat limit should be less restrictive

Approximately five submissions commented that the proposed saturated fat limits were too restrictive. A trade association commented that, "The proposed reduction of calories from saturated fat to less than 7% of calories is inconsistent with higher total fat and protein standards that are outlined in the IOM nutrient targets."

7.3.4 Other comments on saturated fat limits

Approximately 35 submissions addressed saturated fat limits without explicitly expressing support or opposition for the proposal. Some commenters provided recommendations on how to limit high fat foods. An individual commenter recommended limiting the use of condiments with high fat. An individual commenter suggested substituting high fat foods with foods rich in protein. Similarly, another individual commenter suggested that by limiting fried or battered proteins, both saturated and trans fats could be lowered. This commenter also suggested adding mono and poly unsaturated fats to children's diets.

An individual commenter suggested that no further reductions in saturated fats should be made until the DGA recommendations have been met. A professional association suggested USDA collaborate with schools to reduce saturated fats from school meals. Further, an industry association suggested incorporating mushrooms to further lower saturated fats in school meals. A school food service staff member asked if oil-based recipes, in place of saturated fats, would be available for baked goods.

Lastly, an advocacy organization requested clarification regarding footnote “h” on page of the Federal Register proposal. This commenter asserted that the footnote implies a maximum limit schools must not exceed, therefore it is unclear how to implement the standard, since there is no minimum standard of saturated standard for schools to follow.

7.4 Sodium content

7.4.1 General support of proposed sodium content

Approximately 46,420 submissions generally agreed with the proposed sodium restrictions. A health care professional and advocacy organizations noted that although a reduction in sodium has been recommended in the past by USDA in the NSLP/SBP, high school students continue to exceed the upper limits of the recommended daily sodium intake for adults.

A professional association, a public health nutrition directors association, and an advocacy organization noted that the proposed sodium ranges are consistent with DRIs. A State child nutrition unit emphasized that the reduction in sodium levels would encourage more “scratch cooking” in schools. A State department of agriculture suggested USDA work with food manufacturers and the restaurant industry to decrease sodium levels as well, to increase the acceptance of lower sodium foods by students. A food manufacturer suggested USDA emphasize the benefits of purchasing “no-salt-added” canned vegetables in addition to “low-sodium” canned vegetables, to assist schools in meeting the proposed sodium requirements.

7.4.2 General opposition to proposed sodium content

Approximately 325 submissions expressed general opposition to the proposed reduction in sodium levels. Several comments, including a State board of education, an individual commenter, a school district, and school food service staff, asserted the regulations were restrictive. Similarly, several commenters, including an individual commenter, a school food service staff member, and a school, asserted that the proposed sodium levels are more stringent than recommended therapeutic levels. An individual commenter suggested that the sodium requirement for breakfast is particularly unrealistic.

Several commenters, including school food service staff and a school district, suggested that further reduction in sodium levels should not occur because these commenters asserted that analyses indicate that currently implemented menus and processes to reduce sodium have not reduced sodium levels to the recommended levels. Some individual commenters argued that the proposed sodium restrictions would not be effective if implemented because the sodium reduction is not occurring anywhere else children consume foods, e.g., restaurants and at home, which would make the school meals unpalatable to students, negatively affecting participation in the school meal programs. A school district suggested that the proposed rule be piloted to assess impact on programs and student acceptability.

A State board of education envisioned the reduction in sodium levels to require extensive staff training. Further, a school food service staff member asserted that schools would not have funds to alter portion sizes and review recipes to adhere to the proposed sodium levels. Similarly, a nutrition professional expressed concern that without nutrient analysis of menus, schools would not be able to operationally implement the sodium standards.

Lastly, school food service staff and a consulting firm asserted there is no medical need to restrict sodium in healthy children. A school food service staff member believed that since over 80 percent of the U.S. population does not have health concerns related to sodium intake, and that excessive sodium intake

would not cause health issues like diabetes, hypertension, and high blood pressure, there is no need to reduce sodium intake in children.

7.4.3 Amount (of sodium reduction)

7.4.3.1 Proposed final sodium targets (ten years from implementation of final rule)

7.4.3.1.1 Support proposed final sodium targets

Approximately 27,715 submissions expressed support of the proposed final sodium targets. Several commenters, including an advocacy organization, individual commenter/school district/board, a student, a county public health department, and food manufacturer, support the proposed sodium targets and implementation period of 10 years. A medical association and an advocacy organization supported the reduction due to the health risks associated with increased sodium intake.

An advocacy organization referenced evidence that it claimed indicates successful reduction of sodium levels over time. An individual commenter asserted that the sodium guidelines were restrictive, however, supported the IOM recommendation of a ten year implementation period.

7.4.3.1.2 Final sodium targets should be more restrictive

Approximately 10 submissions argued that the final sodium targets should be more restrictive. A professional association recommended that USDA consider further reductions in sodium limits after progress has been assessed. An advocacy organization suggested that USDA base the proposed limit on the DGA recommendation of 1,500 milligrams per day (mg/day) instead of 2,300 mg/day.

7.4.3.1.3 Final sodium targets should be less restrictive

Approximately 940 submissions discussed reducing the proposed final sodium targets. Many commenters, including school food service staff, a food service industry company, school districts, and individual commenters, characterized the proposed sodium targets over the ten year implementation period as unrealistic. Several commenters asserted that implementing the proposed sodium limit over ten years would be unachievable.

A school food service staff member and a school district asserted that the final target is the most challenging and needs to be reevaluated. Some commenters, including individual commenters, school food services staff, and a school nutrition directors association, recommended eliminating the final sodium target.

Several commenters, including a school advocacy organization and a school district, argued that it would be difficult for schools to prepare palatable foods at the proposed final sodium target. Similarly, school food service staff, an individual commenter, and a school concluded that lowering the sodium level to the final target levels would limit the food options that food service staff can prepare. A nutrition professional stated that the School Nutrition Dietary Assessment III (SNDA-III) study found that no participating schools adhered to the existing sodium standards in 2005. Additional concerns include those from an industry association that asserted the proposed standards would be difficult for SFAs and processors to meet. A food manufacturer expressed concern that the final target would be impossible to achieve without compromising food safety of products. Other concerns included what effects the alternatives to sodium would have on health, as well as the substitutes' ability to replace the functional characteristics of salt. School food service staff, individual commenters, and an advocacy organization anticipated that a repercussion of the reduction in sodium is that children would not enjoy their meal and therefore pack lunches that contain high levels of sodium.

A school district asserted that target 1 is achievable but that targets 2 and 3 are too restrictive. This commenter asserted that since foods available outside school meal programs are not reducing sodium limits as drastically, the proposed sodium reduction would not be palatable to students, thus reducing program participation. A school district, a nutrition professional, a food service industry company, a

school district, and a school board asserted that target 2 is achievable with product reformulations however target 3 would not be achievable.

School food service staff, a school district, food manufacturers, a member of the food industry, and a school nutrition association asserted that the final target, based on 2,300 mg/day, is lower than the therapeutic level set for high-risk populations and should be increased.

Recommended alternatives to final sodium limits

One food manufacturer suggested an alternative of 33 percent reduction over ten years. A school food service staff member suggested that FNS should lower the final sodium target to 30 percent over ten years.

Another recommended sodium target, suggested by a county board of education, a school district, and a food service industry company, included a total of 10-20 percent reduction over ten years. These commenters argued that this level of reduction would be more achievable for schools because it would allow for continued purchase of affordable processed foods and allow for current recipes to be modified. School food services staff and a nutrition professional suggested the 10-20 percent reduction would reduce food costs and potential loss of student participation.

A school food services staff member recommended basing the sodium limit on 4,000 mg/day. Another school food service staff member suggested 1,000-1,200 mg/day for lunch and 1,000 mg/day for breakfast. A school district suggested target 2 for the final target, and suggested the following levels for lunch: 1080 mg/day or less for grades 9-12, 1035 mg/day or less for grades 6-8, and 935 mg/day or less for grade K-5. A school district suggested limiting lunch to 1,200 mg in the first 5 years and 1,000 mg in the next five years. A sales and marketing company recommended adopting the American Heart Association levels. A school food service staff member recommended that manufacturers be asked to reduce sodium by one third of the current sodium levels in the high sodium foods produced.

A school food service staff member and a food manufacturer requested that target 2 be the final level and implemented in seven years. An individual commenter and a food manufacturer recommended eliminating target three and adjusting the final sodium levels to target 1 levels over four years and target 2 over eight years. More comments regarding extensions for target timelines are discussed in Section 7.4.4.2.2 ("Additional time is needed to reach targets") below.

General opposition to reducing sodium was expressed by school districts, and a child nutrition consultant. These commenters asserted that there is not enough scientific data linking sodium consumption with health issues in children, and did not agree with claims that children's early exposure to sodium will develop into a preference for salty foods. A child nutrition consultant, a school nutrition directors association, a professional association, and a school district concluded that further studies should be conducted so that the final target levels would be science based. Lastly, two food manufacturers commented that the pizza industry would need to complete research in order to secure low sodium cheeses that adhere to the proposed final target, as well as considered palatable by children.

7.4.3.1.4 Evaluate interim targets before final target is set

Approximately 490 submissions encouraged USDA to monitor the progress of sodium reductions towards targets. Several different suggestions were made regarding the evaluation strategy of the target levels. A food manufacturer suggested that current sodium targets be reviewed prior to any additional reductions. Some commenters, including school districts, a health care professional, and a food manufacturer, suggested that a study be conducted at each target level so that adjustments can be made going forward. Several commenters, including schools, school districts, school food service staff, an individual commenter, and a food service industry company suggested evaluating the feasibility of target 1 before moving forward. Lastly, several commenters, including school food service staff, suggested

implementing both target 1 and target 2 and reevaluating the progress to meeting those targets prior to continuing with target 3.

One commenter, a food service consultant, suggested implementing targets 1 and 2 only until innovation in manufacturing allows for additional reductions. A food manufacturing association suggested that the evaluation period follow the “food product renovation cycle,” which would adjust the evaluation period to every three years or more.

Commenters provided the following reasons for interim review and/or evaluation of targets. Individual commenters and a school district asserted that manufacturers would need time to reformulate their products so they are both palatable and lower in sodium. They also stated that strategies would need to be developed to assist school food service staff to implement the reduced sodium guidelines.

A school suggested that an evaluation period would allow USDA time to decrease the sodium in commodity foods to help school meal programs achieve a long term reduction in sodium. Some commenters, including school districts, a food service industry company, food manufacturers, school food service staff, and a trade association, specifically suggested following the recommendations for target evaluation in the IOM's “School Meals: Building Blocks for Health Children” report.

Areas that commenters, including school districts, schools, and individual commenters asserted should be evaluated included student palatability and student participation rates, food costs, safety of potassium as a replacement for sodium in foods, the overall health of children consuming the low sodium foods, and levels of sodium reduction achieved in school meals compared to food items consumed outside of school.

A school nutrition consultant suggested accounting for naturally occurring sodium prior to setting sodium limits. A school district suggested first implementing a test of sodium levels in order to assess an acceptable range. A school food service staff member noted their use of student taste tests to evaluate acceptance.

7.4.3.1.5 Other comments on level of final maximum sodium targets

Approximately 80 submissions provided additional viewpoints regarding the proposed final maximum sodium targets. A school, a school nutrition consultant, and school districts expressed concern that schools would not be eligible for the 6 cent reimbursement rate increase if they are not able to attain the proposed sodium target reductions. A nutrition professional suggested that the DGA recommendation of less than 1,500 mg/day should not be considered in the proposed rule. Another commenter argued that if schools are already serving very low sodium meals, they should not be required to reduce the sodium content of the meals that they serve.

A school food service staff member expressed concern regarding the safety of manufacturers using potassium chloride as a replacement for sodium in meals. Other commenters similarly expressed concerns about how manufacturers might alter their products with chemicals or additives to meet new sodium guidelines. A food manufacturer noted the importance of sodium in foods and added that since sodium is a low cost ingredient, any substitutions would impose additional costs onto schools. Another food manufacturer stated that the proposed sodium regulations do not provide guidelines on condiments and how they should be factored into the overall sodium limits.

7.4.3.2 Proposed interim sodium targets

7.4.3.2.1 Support proposed interim sodium targets

Approximately 150 submissions expressed general support for the proposed interim sodium targets. Several commenters, including school food service staff, school districts, food manufacturers, advocacy organizations, academic commenters, community organizations, county public health agencies, and a food service industry company, supported the two proposed interim sodium targets.

7.4.3.2.2 Interim sodium targets should be more restrictive

An advocacy organization suggested that USDA lower the sodium target to less than 2,300 mg/day for the first target (5 years) and to less than 1,500 mg/day over the final 5 years.

7.4.3.2.3 Interim sodium targets should be less restrictive

Approximately 115 submissions recommended that the sodium targets should be less restrictive. A food service industry representative argued that due to sodium in other food components, such as whole grains, meats, and skim milk, the proposed interim sodium limits on breakfast and lunch would not be feasible over time. A school district asserted that the proposed 1,500 mg/day limit should be eliminated. A school food service staff member noted that with the current sodium reduction efforts implemented in their school meal program, they have not yet met the first proposed interim sodium target level. This commenter expressed concern that more severe changes would need to be made to meet the proposed target levels.

7.4.3.2.4 Other comments on level of interim maximum sodium targets

Approximately 25 submissions addressed the level of interim sodium targets without explicitly expressing support or opposition. A school district discussed several challenges it anticipates in implementing the proposed interim sodium limits due to heavy reliance on canned food items. Similarly, a school food service staff member anticipated a depletion in canned food stock, that is used during inclement weather, as schools attempt to meet the interim proposed sodium limits with scratch cooking.

7.4.3.3 Other comments on maximum sodium limits

Approximately 90 submissions addressed the proposed levels of sodium reduction in ways that did not fit into the issue categories discussed above (under Section 7.4.3). A school district argued that sodium should not be restricted in meats because high sodium meats are part of an American breakfast. An individual commenter asserted that reducing sodium would require more scratch cooking, which many schools are not equipped to do. Further, this commenter stated that reducing the amount of sodium would negatively affect vegetarian meals high in dairy products, which contain natural levels of sodium. Other school nutrition programs expressed concern regarding the increased effort needed from school to implement the proposed limits. A school district also suggested limiting sodium in entrees only. A State department of education asked how the schools with different or combined grade groups would be expected to document and implement the different sodium levels.

7.4.4 Timeline for proposed sodium targets implementation

7.4.4.1 Support of timeline for proposed sodium target implementation

Approximately 15 submissions, which include a food manufacturer, an individual commenter, a food manufacturing association, a school district, and school food services staff, expressed support for the proposed sodium reduction target implementation timeline. A school food service staff member asserted that the timeline would provide manufacturers enough time to produce products that meet the proposed specifications.

7.4.4.2 Concerns

7.4.4.2.1 Targets should be reached quicker

Approximately 10 submissions suggested that one or more of the sodium targets should be reached sooner than proposed. An individual commenter suggested that, given the recommended sodium levels in the DGA, increased concern regarding the harmful effects of sodium, and lack of evidence for the ten year timeline, USDA should follow IOM's recommended timeline of eight years instead of ten. A municipal department of education suggested shortening the implementation period to six years, with a review within the first three years.

A school nutrition association suggested that the implementation of sodium targets should occur in grades K-5 over five years, with an extension into grades 6-8 over the following three years with the last implementation occurring in the following 4 years for grades 9-12. An individual commenter suggested that ten years allows too much time for children to change, suggesting that a faster implementation would encourage children to eat outside of their normal food choices. Another individual commenter referenced a study which concluded that sodium can be reduced by 20 percent in six months, compared to FNS's proposed ten year phase-in.

7.4.4.2.2 Additional time is needed to reach targets

Approximately 375 submissions suggested that additional time would be needed to reach one or more of the proposed sodium targets. These commenters, including school districts, school food service staff, individual commenters, food processing associations, food manufacturers, nutrition professionals, religious organizations, schools, State departments of agriculture, and food trade associations, asserted that the proposed timeline to implement sodium targets is too aggressive. Some commenters, including school districts and school food service staff, requested the timeline to be extended for an undefined amount of time. Some commenters, including school food service staff and school districts, asserted that the timeline would be a challenge due to the need change the accustomed tastes of students, to develop new recipes and train staff, as well as the need to split grades into the proposed levels. A school district and school food service staff member expressed concerns that food manufacturers and market changes to sodium levels would not change as quickly as the proposed timeline.

Some commenters requested additional time for manufacturers to research and safely reduce sodium in foods. A food processing association suggested that testing for food safety and customer satisfaction, research for sodium replacements, and producing new technology and food products would not be completed within the proposed timeline.

Several commenters, including religious organizations, individual commenters, and school food service staff, asserted that targets 1 and 2 would be more attainable if the timelines were extended. Suggestions from school food service staff, a food manufacturer, a nutrition professional, and individual commenters included lengthening the time to achieve the first target to four years instead of two years. An individual commenter suggested an extension of the second target to eight years, and eliminating the third target.

7.4.4.3 Other comments on timeline for maximum sodium limits

Approximately 45 submissions addressed the proposed timeline for reaching the sodium targets but did not explicitly express either support or opposition. Some commenters, including school districts and school food services staff, clarified that the changes in sodium should be implemented ten years from the date of the rule's implementation, as opposed to 10 years from the final rule. A school food service staff member suggested that the limitation of sodium levels should begin as soon as pre-school and kindergarten so children would be accustomed to lower sodium levels when they are older. A State policy council suggested that USDA work with food processors to set yearly targets for lower-sodium commodity products. Some commenters, including school districts, requested guidance from USDA regarding calculation of sodium content in meals.

7.4.5 Concerns about product availability

Approximately 885 submissions expressed concerns regarding the availability of products that would be conducive to meeting the proposed sodium targets. These commenters presented several challenges that may be faced when finding suitable, low-sodium foods. School food service staff, school districts, individual commenters, a professional association, and nutrition professionals expressed concern regarding the availability of low-sodium manufactured and processed foods, including "clean label" processed foods. Many of these commenters stated that due to current reliance on processed foods, collaboration with manufacturers would be necessary to ensure that low-sodium products are available.

A school food service staff member asserted that additional costs would necessarily be imposed on the manufacturing industry because they would have to reformulate products in conformance to the lower sodium limits. Further, an individual commenter, a food manufacturer, and a school district expressed concern regarding increased product costs to schools due to the need for reformulating products.

Several commenters, including school food service staff and schools, expressed concern regarding schools' ability to cook from scratch, including lack of equipment and staff training, in order to comply with the proposed sodium limits. A school district and an individual commenter expressed concern that canned foods, including USDA commodity foods and donated foods, would not meet the proposed sodium limits. An individual commenter urged that all USDA canned vegetables should be low sodium to meet the proposed guidelines. A school district noted the challenge schools may face in removing older stocks of canned or processed foods.

Two food manufacturers stated that sufficient time would be needed to produce products that meet the proposed sodium limits, without compromising food safety. A food manufacturer also noted that several foods, such as processed meats and breads, require sodium for food safety and quality. This commenter expressed concern regarding the lack of a replacement for sodium to maintain the expected characteristics and taste of these foods. Similarly, another food manufacturer noted that there will not be a one size fits all solution to lowering sodium because all food systems require different amounts of sodium. An individual commenter stated that the sodium content of breads used in the analysis was significantly lower than most acceptably priced commercial products used in schools. A food manufacturing association suggested USDA collaborate with the Farm Service Agency (FSA) to identify lower sodium foods for the USDA Foods commodity program.

7.4.6 Comments on student acceptance with lower sodium levels

Approximately 795 submissions discussed concerns with student acceptance of lower sodium levels in foods. Several commenters, including individual commenters, schools, school districts, school food service staff, food manufacturers, and trade associations, asserted that students would not participate in school meal programs if they do not find the lower sodium foods palatable. An individual commenter, schools, and school food service staff asserted that because foods found outside school will not be consistent with school meals, students would be less likely to want to eat school meals. An individual commenter stated that some low sodium changes have already been made to certain canned products, and kids have been complaining. A school advocacy organization added that if a change in school meal palatability results in decreased participation, there is potential for a stigma to attach to school meals that school meals are only for those in financial need, which would further discourage those students in greatest need from consuming meals at school.

Some commenters, including a school food service staff member, expressed concern regarding consumption of nutrient rich foods if students do not find the lower sodium foods acceptable. This commenter suggested that students would resort to bringing potentially unhealthy lunches to school, throwing away the nutritious foods, and not consuming their meals. School districts and school food service staff suggested that nutrition education, taste testing, and research would lessen the concern of a drop in student participation. An individual commenter asserted that the proposed ten year timeline is not needed to change children's palates because offering unprocessed foods with different textures would encourage children to be more adventurous in their food choices. Another commenter recommended that pilot school districts taste test the acceptability of lower sodium levels before implementation.

7.4.7 Comments on baseline (current average sodium levels)

7.4.7.1 Support using SNDA-III data as baseline

Approximately three submissions, including school food service staff, a food manufacturer, and food manufacturer association, stated that they approved the use of SNDA-III data when evaluating baselines measures.

7.4.7.2 Concerns about using SNDA-III as baseline

No submissions expressed concerns about using the SNDA-III data to establish a baseline for current sodium levels.

7.4.7.3 Alternative recommended baseline

A food service industry company recommended that sodium targets be based on a reduced percentage of the average diet because it asserted that the acceptability of severely reduced sodium levels depends on the individual's diet outside of school.

7.4.8 Naturally occurring sodium should not count toward sodium limits

Approximately 910 submissions, including school food service staff, school districts, food service industry companies, schools, superintendents, nutrition professionals, a State department of public instruction, State departments of education, commodity distribution associations, food manufacturers, individual commenters, trade associations, food processing associations, a law firm, food banks, an academic commenter, and a sales and marketing company, requested an allowance for naturally occurring sodium found in required foods, such as dairy products and meats. Several commenters, including school districts and an individual commenter, expressed concern regarding their ability to meet the sodium requirements if naturally occurring sodium is not removed from the calculated sodium targets.

Some commenters, including a school district and a consulting firm suggested recalculating the sodium targets to remove any foods with naturally occurring sodium prior to implementing the final sodium targets. A member of a food industry association noted the importance of sodium in ensuring the safety of some cheeses and suggested that reduced-fat cheese still be provided in school meals.

7.4.9 Other comments on limiting sodium content

Approximately 450 submissions addressed issues associated with limiting sodium content in ways that did not necessarily fit into the issue categories discussed above.

Sodium replacements/additives

Several commenters, including school food service staff and a school district, expressed interest in regulating sodium replacements like sodium chloride and potassium chloride. One individual commenter predicted the over consumption of potassium due to it being one of the few sodium replacements.

A school food service staff asserted that with the proposed limits on sodium there would be an increase in food additives to compensate for lost flavor. This commenter requested information regarding the potential for food additives to be regulated.

Processed foods

Several commenters discussed limits on processed foods. An individual commenter was in favor of removing processed foods over time in order to assist with the reduction in sodium, sugar and fat. An academic commenter discussed the potential health risks of heart disease and diabetes that have been linked to processed meat consumption. An individual commenter recommended a 50 percent reduction in the use of processed foods.

A few commenters, including a food service company and a food manufacturer, discussed the need for a working definition for the word "processed." A food manufacturer stated that the definition used in the 2010 DGA Committee report is broad and encompasses several of the foods that the 2010 DGA Committee actually recommended. A food manufacturer and a State department of public instruction were in favor of processed foods and asserted that they contain nutritional benefits and are often affordable and convenient. Another food manufacturer asserted that processing, in and of itself, does not equate to increased sodium levels, but merely relates to the function of producing a palate-pleasing menu

item from USDA Foods. For example, this commenter stated that a single serving bag of sliced apple wedges is a “processed” food.

Several commenters, including school districts, a food processing association, and a law firm, supported the use of sodium as it decreases food safety concerns, for example, it is used as a preservative in items like canned vegetables. A State department of education expressed concern that a decrease in processed food use would increase the potential for foodborne illness. This commenter discussed the additional training that would be needed to ensure the safety of products as they are cooked.

Increased Costs

Several commenters, including school districts, an advocacy organization, and a food service staff member, asserted that the proposed sodium requirements would increase food and labor costs for schools. A school food service staff member asserted that due to the unknown risks of using salt alternatives, the potential increased cost of using these alternatives must be quantified. An individual commenter discussed the consequence of low sodium standards in preparing and serving vegetables. A school food service staff member noted that USDA commodities would need to follow sodium restrictions as well. A school district noted that if schools find the new sodium requirements to be unattainable, they would not be eligible for the increased lunch reimbursement of six cents a meal.

Other

Several commenters, including an industry association, an individual commenter, a food bank, a food manufacturer, and a school district, discussed the need to limit condiments due to their high fat and sodium amounts. An individual commenter expressed concern regarding how student participation would be affected if schools could not continue to offer popular condiments due to the amount of sodium they contain. A school food service management company asserted that in order for USDA to implement the proposed sodium requirements, communication and information sharing must occur between technology stakeholders. An industry council discussed the need for continued consumption of cheese due to its nutrient contributions as well as low fat and low sodium options. An individual commenter suggested that schools with high participation in programs that require physical activity be allowed to have lower sodium restrictions. Lastly, a school food service staff member asked for clarification regarding the application of DGA sodium guidelines for populations prone to hypertension.

7.5 Tracking calories, saturated fat, and sodium

7.5.1 No requirement for SFAs to conduct nutrient analysis to monitor the four dietary specifications (saturated fat, calories, sodium, trans fat)

7.5.1.1 Support not having a requirement

No submissions expressed this view.

7.5.1.2 Oppose not having a requirement

Approximately 130 submissions, including school districts, a school food service staff, individual commenters, State nutrition units, a food service industry company, schools, trade associations, school advocacy organizations and others, expressed opposition to the proposal to not require schools to perform nutrient analyses for saturated fats, calories, sodium and trans fats. Most of these commenters asserted that without nutrient analysis it would be difficult for SFAs to assess compliance of sodium and calorie requirements.

7.5.2 Requiring weighted nutrient analysis of school meal averages

7.5.2.1 Support requiring weighted nutrient analysis of school meal averages

Approximately 10 submissions expressed support for the proposal to require nutrient analyses conducted by State Agencies to be weighted. Several commenters, including a professional association, asserted that

in order for popular foods to be properly assessed for meal standards, weighted analysis would be appropriate. Further, a school food service staff member and an advocacy organization asserted that by requiring weighted analysis, children would be able to choose their foods instead of being offered standard, planned meals.

7.5.2.2 Oppose requiring weighted nutrient analysis of school meal averages

Approximately 130 submissions expressed opposition to weighed nutrient analyses. Those commenters that were in opposition of using weighted nutrient analysis to determine compliance, including nutrition professionals and individual commenters, noted that the recommendation for centralized menus is inconsistent with the averaging that occurs with weighted nutrient analysis, and that averaging nutrient levels would not identify issues in menu planning or solutions for the schools. A school food service staff member and an individual commenter stated that using weighted averages over 2 weeks to assess compliance with the meal pattern is problematic because they show only what is served, not what was eaten by students. Similarly, an individual commenter asserted that the results of weighted nutrient analyses would be flawed because they would not reflect what students actually consume. A food manufacturer stated that evaluating compliance to the meal pattern based on whether the students have the opportunity to select a compliant week would protect menus offering choice from being penalized. Stated another way, this commenter asserted that if it is possible for a student to make their meal choices across a week to reflect the weekly subgroup benchmarks, then the menu should be evaluated as compliant.

7.5.3 Other comments on tracking calories, saturated fat, and sodium

Approximately 25 submissions addressed nutrient tracking in ways that did not fit into the issue categories discussed above. A nutrition professional and a State department of agriculture suggested that a tool be developed where State Agencies can help identify issues and help implement meal patterns for schools. A nutrient analysis software company suggested that software vendors be provided with USDA software requirements upon final implementation of the rule. Further, a food manufacturer asked if CN labeling would change after nutrient data requirements are removed.

7.6 Trans fat

7.6.1 Support trans fat proposal (zero grams of trans fat per serving)

Approximately 19,980 submissions, including individual commenters, advocacy organizations, schools, health care professionals, profession associations, school food service staff, and community organizations, an academic commenter, a food bank, a nutrition professional, a municipality, and a State department of education, expressed support for the proposal to restrict trans fats in school meals.

A professional association suggested that USDA provide technical assistance and advise schools not to replace trans fats with saturated fats but poly and mono saturated fats instead. A health care professional requested that all trans fats be eliminated as well as partially hydrogenated oils, not just those labeled as zero or less than 0.5 grams.

7.6.1.1 Support excluding foods containing minimal amounts of naturally occurring trans fats (e.g., lamb, beef)

Approximately 35 submissions, including nutrition professionals and individual commenters, supported excluding foods containing naturally occurring trans fats from the prohibition of trans fat in school meals. An individual commenter noted that the American Heart Association determined that “natural trans fats as part of a low saturated fat diet do not contribute to cardiovascular risk.” Two food manufacturing associations requested that manufacturers be allowed to subtract naturally occurring trans fats from product nutrition information provided to schools.

7.6.2 Trans fat restrictions should be more permissive (limit should be greater than zero)

Approximately five submissions suggested that trans fat restrictions should be more permissive. An individual commenter asserted that limits on trans fats would discourage scratch cooking of whole grains and other baked goods due to the lack of a healthy alternative. This commenter stated that the New York City ban on trans fats has led to increased use of hydrogenated oils and saturated fats in foods.

7.6.3 Concerns about obtaining trans fat information

Approximately three submissions expressed concerns related to obtaining trans fat information. A trade association noted a potential source of confusion between the following Federal Register parts, with regards to allowable amounts of naturally occurring trans fats: sections 210.10(a)(3), 210.10(b)(ii), sections 210(h)(2) and 220.8(b)(1)(ii), and between sections 220.8(c)(4) and 220.8(h)(1). This commenter suggested that FNS clarify the wording to be added to communicate the intent of allowing small amounts of naturally occurring trans fats.

7.6.4 Other comments on trans fat restrictions

Approximately 25 submissions addressed the proposed trans fat restriction in ways that did not fit into the issue categories discussed above. A school district asked what the additional costs would be when providing foods with zero grams trans fat. Another school district suggested incorporating trans fats in Coordinated Review Effort (CRE)/SMI review to ensure that unhealthy oils are discouraged from use. This commenter also noted that palm oil, although previously thought to be a suitable replacement for trans fats, has not been found to have negative impacts on cholesterol and cardiovascular health.

7.7 Need for cholesterol limits

No submissions addressed this issue.

7.8 Need for minimum dietary fiber requirements

Approximately three submissions addressed the potential need for minimum dietary fiber requirements. An individual commenter noted that the SBP should include total grams of carbohydrates and high fiber to promote healthy eating and prevent childhood diabetes. An advocacy organization suggested that the regulations provide a requirement for fiber-rich whole grains such as 1.1 grams of fiber per 10 grams of carbohydrate.

7.9 Other comments on nutrition standards

Approximately 135 submissions addressed the proposed nutrient standards in ways that did not fit into the issue categories discussed above. An individual commenter suggested using “standards” instead of “targets” so schools can better define their aims and requirements. A school district and individual commenter expressed concern regarding the range of portion sizes and the added costs to manufacturers for producing multiple portion sizes.

A state department of education addressed the use of additives in foods such as nutritional supplements, caffeine and artificial or nonnutritive sweeteners. This commenter noted that the regulations do not discuss nutritional supplements like amino acids, extracts, herbs, and botanicals, or the dangers of manufacturer claims that these additives are healthy. This commenter expressed concern that the safety of these products for children is unknown and should be regulated by USDA.

This State department of education also suggested the development of regulations or standards similar to IOM nutrition standards for foods and beverages containing caffeine, so foods with significant amounts of caffeine would not be served in schools. The commenter also suggested that since evidence regarding the harmful effects of artificial sweeteners is not conclusive, USDA should not recommend the use of artificial sweeteners to assist in reduction of calorie or sugar consumption. A food industry association expressed concern that the focus on reducing sugar consumption would increase the use of artificial sweeteners.

A food industry association asserted that the Pyramid model of eating is too restrictive. This commenter asserted that the “interrelated natures of macronutrient and micronutrient consumption create the real potential for this guidance to create the unintended consequence of undermining the important public health goal of nutrient adequacy.”

A State department of education requested information regarding changes to the foods of minimal nutritional value (FMNV) regulation and any effects the proposed regulation would have on FMNV. A school district requested that USDA restore previous nutrient targets and add targets for potassium, phosphorus, Vitamin D, and others.

8. Standards for meals selected by the student (offer versus serve regulations)

8.1 Meals selected by students must include at least a fruit or a vegetable (at breakfast and lunch)

8.1.1. Support

Approximately 40 submissions expressed support for the proposed offer versus serve requirement that in order for a meal selected by a student to be reimbursable, it must include either a fruit or a vegetable. The commenters expressing support for this provision included individual commenters, school districts, school food service staff, trade associations, advocacy organizations, a professional association, and a State department of health.

Several of these commenters, including advocacy organizations, a professional association, and a trade association, supported this requirement as a means of addressing the problem that children do not consume the recommended amounts or varieties of fruits and vegetables.² Further, an advocacy organization commented that the low intake of fruits and vegetables is evident in the inadequate consumption of dietary fiber and potassium by 95 percent of all children. Some commenters, including advocacy organizations and a professional association, stated that while students who participate in the school meal programs consume more fruits and vegetables than nonparticipants, they still fall well short of recommended levels. A State department of health commented that the proposed requirement that a fruit or vegetable must be included in a reimbursable meal is consistent with the emphasis on increased fruit and vegetable consumption in the 2010 DGAs.

An advocacy group commented that requiring students to take a fruit or a vegetable should help increase actual fruit and vegetable consumption. This commenter cited a pilot study conducted at Yale University Rudd Center for Food Policy and Obesity in which more students consumed fruit when students were prompted to take a fruit item. A trade association that supported the proposed requirement recommended that students be permitted to take their fruit/fruit juice serving with them out of the cafeteria.

² Some of these commenters cited data from the National Health and Nutrition Examination Survey (NHANES) from 2007-2008 to support this assertion.

8.1.2 Oppose

Approximately 1,540 submissions expressed opposition for the proposed requirement that a student must select either a fruit or a vegetable for the meal to be reimbursable. Commenters that opposed this part of the proposal included individual commenters, a State department of education, school districts, school food service staff, school advocacy organizations, a teachers union, students, a child nutrition industry consultant, a food manufacturer, food service industry firms, and nutrition professionals. Generally, these commenters argued that the proposed requirement that a reimbursable meal must include a fruit or a vegetable would result in increased plate waste and increased cost, and that the meal would be too much for young students to consume at once.

Several commenters, including school districts, school food service staff, a teachers union, a state department of education, a State department of public instruction, and individual commenters, asserted that this part of the proposal would result in significant plate waste and, thus, increased food costs because the school may be requiring the student to choose a food that he/she does not want. Other commenters, including school districts, school food service staff, and an individual commenter, stated that younger students physically cannot consume the increased fruit and vegetable portions, which would result in plate waste and increased food costs. Some commenters, including a State department of public instruction, a professional association, school districts, school food service staff, and an individual commenter, argued that children would not have sufficient time to consume the higher volumes of fruit and vegetables required, and requiring the students to take them would result in higher food cost for food that may not be consumed. One school food service staff member commented that a neighboring school district documented increased food cost and plate waste in a breakfast pilot requiring children to take increased portions of fruits.

Some commenters, including a school district, a school food service staff member, an individual commenter, and a student, pointed out that you cannot make students eat food items. Several commenters, including school districts, school food service staff, and a food service industry firm, commented that forcing students to take more as a reportable component would not necessarily increase consumption. One school food service staff member commented that this is particularly true at the high school level: older students resent being forced to take additional items. An academic commenter recommended a transitional phase for high school students, allowing an exemption from the requirement to select a fruit or vegetable at meals. An individual commenter stated that fruits and vegetables on the student plates would not benefit the students unless they eat it. Several commenters, including a State WIC program, school districts, school food service staff, a child nutrition industry consultant, and other nutrition professionals, commented that when food is forced on a child, they are less likely to eat it.³ Some commenters, including school districts, school food service staff, a nutrition professional, and an individual commenter, suggested that USDA should focus on education first, because when children are educated in good choices and learn to make healthier choices, they will choose it for themselves, and eat the food they have chosen.

A nutrition professional cited prior experience as a school food service director to support the statement that the largest amount of plate waste comes from vegetables. Two school districts commented that it can take up to 20 different exposures to a new food until it is accepted, specifically fruits and vegetables, and that making children take a fruit or vegetable would only lead to food waste, dissatisfaction with the school lunch experience, and ultimately decreased meal participation. Other commenters, including school districts, a nutrition professional, and a food service industry firm, agreed that forcing food components would lead to lost customers for the meal programs. Further, a school district commented

³ A school district and school food service staff member cited the Cornell Center for Behavioral Economics in Child Nutrition Programs' research and recommendations as suggesting that requiring students who do not want a fruit or vegetable to take one can create an excess of food waste.

that it has had complaints wanting to know why the schools have so much food waste with the current meal pattern. Indeed, a large metropolitan school district cited studies that it stated indicate the food waste has long been an concern in Congress. A food manufacturer and a school food service staff member commented that there may be public backlash from the increased waste that would result from the requirement to take a fruit or a vegetable. A school food service staff member urged USDA to visit sites and see what students eat and what they throw away currently before adding the new requirement to take a fruit or a vegetable.

School food service staff members commented on specific indirect costs that would increase as a result of the proposed requirement that students must take a fruit or a vegetable. These commenters asserted that more trash bags would be needed, as children would be throwing away food they are required to take, and more frequent trash pick-up would mean increased cost to the school district as well as filling up landfills more quickly. A school food service staff member cited increased delivery costs as well. Individual commenters asserted that increased refrigeration needed for increased fruit and vegetable servings would result in increased equipment costs. A student commented that the fruits and vegetables would spoil quickly. Some commenters, including a school district, school food service staff, and an individual commenter, argued that retraining staff, students, and families to the new requirement to take a fruit or a vegetable would be necessary, and would be a huge undertaking with both cost and non-cost factors. A school district and a State department of education commented that this requirement would result in confusion at the point of sale. A large metropolitan school district and public citizens commented that the proposed requirement would contribute to obesity by forcing students to take food.

Several commenters, including school districts, a State department of public instruction, school food service staff, and an individual commenter, asserted that this proposed provision would negate the conventional definition and purpose of offer versus serve, because you are requiring a child to take a food that they do not want. Some commenters, including school districts, school food service staff, a State department of public instruction, a food service industry firm, a professional association, and an individual commenter, stated that requiring children to take a fruit or a vegetable has the potential to convey the wrong impression regarding the acceptability and quality of school meals. A school district and a school food service staff member similarly commented that mandating the taking of food items would result in unnecessary costs, creating a perception of wasteful spending in the program, which would compromise program integrity. A school district and a school food service staff member also noted that increased plate waste by requiring students to take a fruit or vegetable would send a poor message. An individual commenter stated that it does not believe the Agency has adequately justified why it cannot accomplish its goals without requiring children to take a fruit or a vegetable.

One student commented that many foods can only be ordered and are available regionally, and that students would grow tired of the same thing every day if they were not able to get new produce that was produced outside the area. Another student commented that forcing students to take a fruit or a vegetable would not allow a school to see what fruits or vegetables are chosen by choice and what students actually like, thus further increasing wasted food costs. One school district, a food service industry firm, and a State WIC program noted a potential supply/pricing issue that may result when schools have to purchase fruit for every reimbursable meal, whereas only half of students currently take a piece of fruit. A school food service staff member argued that requiring a reimbursable meal to include a fruit or vegetable could result in lower calcium consumption because 100% fruit juice would displace dairy product consumption since schools would serve juice at each meal as a way to ensure that students receive a reimbursable meal.

A school food service staff member further commented that this proposed requirement would result in overt identification of students who receive free or reduced price meals, because only students who cannot pay for the entrees a la carte would be forced to take food items they may not want. Alternatively, one school food service staff member commented that the requirement may drive free or reduced-price students from the program, if they refuse to accept the fruit/vegetable and have insufficient funds on their

account to pay a la carte. Some commenters, including school districts and a food service industry firm, commented that some students would become very upset if they must put a vegetable on their plate.

A few commenters, including school districts, expressed concern that the proposed requirement that students must select a full serving of fruit or vegetable would complicate self-serve salad bar service. For example, a school district commented that it would need to either move the fruits and vegetables behind the counter to monitor the components of a reimbursable meal, or add labor to monitor the produce bar. Either way, that commenter stated that the requirement is not practical operationally. A nutrition professional and a school food service staff member recommended that fruit and vegetable bars with a nutritionally balanced variety be allowed to meet the requirement of a larger portion of fruit and/or vegetable.

One alternative to mandating a fruit or a vegetable proposed by an individual commenter would be to have schools present fruits and vegetables as they are in the Fresh Fruit and Vegetable Program. This commenter stated that this would allow schools to offer fruits and vegetables to students when they are hungry and in amounts they are able to consume, which has proven successful throughout the State of Missouri. A teachers union that opposed the proposed requirement to take a fruit or a vegetable encouraged USDA to promote the use of evidence-based strategies to get children to eat more fruits and vegetables instead. For example, the teachers union recommended that USDA utilize the findings in behavioral food economics studies, which demonstrate ways to place fruits and vegetables on the cafeteria line, and to prepare fruits and vegetables so that they look more appealing.

8.1.3 Other

Approximately 230 submissions addressed the proposed offer versus requirement to require students to select a fruit or a vegetable without necessarily supporting or opposing the requirement. Several commenters, including school districts, a State department of education, school food service staff, a trade association, a policy advocacy organization, a nutrition professional, a school nutrition consultant, and individual commenters, requested clarification regarding whether or not the requirement to take a fruit or a vegetable would require the child to take the entire minimum daily required amount of fruit or vegetable component. One nutrition professional commented that schools would likely offer ½ cup serving of one fruit and a ½ cup serving of another fruit, plus a ½ cup of 1 vegetable, and ½ cup of another, and asked what constitutes a serving of a fruit or vegetable for purposes of fulfilling the requirement that a student take one fruit or one vegetable. Similarly, school districts asked for clarification regarding whether, if a school offers 4 oz. of 100% fruit juice and ½ cup of fruit at breakfast, whether a student is required to take both. A policy advocacy organization and a trade association commented that USDA's intent regarding the amount of fruit or vegetable that must be taken needs to be clearly stated.

A State department of education and a school advocacy organization requested clarification regarding how a State Agency could monitor students taking 1 cup of fruit or vegetable in a salad bar setting, or noted that this crediting would be difficult to implement. A school district and a school advocacy organization commented that this new requirement that a reimbursable meal must include a fruit or a vegetable would require in-service education and training for school food service employees, as it would be a major paradigm shift. School districts and an individual commenter asserted that overt discrimination would increase when requiring free and reduced-price students to take a fruit/vegetable component, and paid students could just purchase the entrée or a la carte.

A school food service staff member commented that requiring students to select a fruit or a vegetable does not guarantee that they will consume it, and questioned whether this requirement would just lead to plate waste. A policy advocacy organization and a trade association commented that because of the requirement take a fruit or vegetable, it is critically important that schools serve fruits that children like to eat. One school district commented that younger children should be required to take a fruit or a vegetable, but that requiring older children to take a fruit or a vegetable that they do not want would only

lead to increased costs and wasted food. An advocacy organization recommended that FNS allow only whole fruits and vegetables, not juice, as the required fruit or vegetable component.

A food service industry firm suggested that USDA postpone the requirement that the reimbursable meal include a fruit or a vegetable until two years after the increased quantities of fruits and vegetable offerings were implemented. This commenter asserted that this would provide food service operators more time to develop appealing recipes, time for students to get accustomed to being offered increased quantities, time for testing products, and time for school districts to provide nutrition educational campaigns.

An industry association noted that the proposed rule requires all students to take at least one fruit, juice, or non-starchy vegetable at breakfast, whereas the IOM recommends only one fruit or fruit juice. A community organization and an individual commenter suggested that FNS require students to select both the fruit and vegetable components, allowing the student to only reject discretionary components. The individual commenter stated that the proposed requirement that students must select a fruit or a vegetable undermines the rule's alignment with the 2005 DGAs because it allows a student to consistently choose the fruit and reject the vegetable, which would result in the student consuming no vegetables at school. Further, this commenter argued that the proposed offer versus serve requirements would undermine the benefits of offering a variety of vegetables because a student could take a vegetable only on the day the school was serving a vegetable the student already prefers, which would encourage picky eating over expanding the student's palate.

8.2 Suggest permitting students to select a smaller serving the required fruit or vegetable

Approximately 570 submissions included suggestions to permit a reimbursable meal include a fruit or vegetable serving that is smaller than the minimum daily required fruit or vegetable component. Several commenters, including a school district, school food service staff, a food bank, and an individual commenter, requested either that the offer versus serve requirements remain in their current form, or specify that a ½ cup serving qualifies as meeting the proposed requirement that a reimbursable meal must include a fruit or a vegetable. A school food service staff member urged FNS to maintain the offer versus serve minimum amount required to be selected by a student of fruit or vegetable at 1/8 cup for both breakfast and lunch. A school district commented that it would support a minimum amount of ¼ cup of fruits or vegetables required to be selected for both breakfast and lunch to be reimbursable.

Some commenters, including a State department of education, school districts, school food service staff, a food bank, school advocacy organizations, a nutrition professional, and an individual commenter, urged FNS to ensure that the rule clearly identifies that the 1 cup serving of fruit and/or vegetable component equals two ½ cup servings, and that only a single ½ cup serving is required to be on the tray in order for the breakfast to qualify for reimbursement, or supported such a requirement. Several commenters, including school districts, a professional association, a State department of education, and individual commenters, suggested that FNS count breakfast as reimbursable if a student takes a minimum of ½ cup of the fruit requirement. School districts commented that the 1 cup requirement may be difficult for students to consume with limited time, thus increasing food waste. Individual commenters asserted that a 1 cup serving is not appropriate for younger students.

A State department of education commented that if the requirement is interpreted as a full cup of fruit being required for breakfast to be reimbursable, it would be difficult to offer and account for fresh fruit choices. For example, this commenter stated that it would take more than two tangerines or at least two bananas to provide a full cup of fruit. This State department of education and a school food service staff member commented that the resultant cost and confusion could lead to fewer fresh fruit choices at breakfast and increased reliance on canned fruit. Similarly, an academic commenter argued that requiring young children (grades K-4) to consume two pieces of fruit at breakfast in addition to milk, a grain, and meat component, would be costly and is unnecessary.

A State department of education, school districts, school food service staff, a State department of public instruction, a school advocacy organization, and individual commenters suggested that USDA allow students to take ½ cup of fruits or vegetables at lunch for the meal to count as reimbursable. A school district and a school food service staff member commented that a ½ cup serving is too large for many elementary students to consume at lunch. A school district recommended that a ¼ cup minimum serving be permitted to meet the requirement for a fruit or a vegetable in a reimbursable meal, which would potentially decrease waste and increase the options and variety that schools could provide. A school district commented that FNS should count a lunch meal as being reimbursable if the student takes a minimum of 1/8 cup of fruit or vegetable. A professional association suggested a lesser “reasonable” required amount for the required quantity of fruit or vegetable at lunch, which would consider portion sizes, costs, and time to consume lunch. This commenter stated that encouraging children to take items they may not choose on their own would produce costly food waste, and that many students do not have the time given to them during lunch to consume the quantity of fruits and vegetables being recommended. A school district commented that at lunch portion size should be considered the same as breakfast, and that the larger serving size could be an option for all students.

A school district and school food service staff members suggested that students should be able to take a smaller version of the fruit and vegetable component, especially of something they are unfamiliar with, because offering smaller portions is an effective way to get students to try something new and would reduce food waste. The school food service staff member suggested one half of the meal pattern portion size as the minimum required amount a student must take to qualify for reimbursement. A nutrition professional suggested that pre-K through 3rd grade students should be given the options to take smaller portions.

A school district discussed the increase in costs it would face if it had to serve 1 cup of vegetables to each student every day, which would amount to 218 pounds of vegetables in 180 school days. A few commenters, including a State department of education, a State department of public instruction, school districts, school food service staff, a nutrition professional, and an individual commenter, recommended that the meal pattern table be modified to indicate “servings” rather than “cups.”

8.3 Suggest that students be allowed to combine fruits and vegetables to make one component

Approximately 200 submissions included suggestions that students be allowed to combine fruits and vegetables for purposes of the proposed requirement that a meal must include a fruit or vegetable to be reimbursable. Several commenters, including a State department of education, school districts, school food service staff, school advocacy organizations, a professional association, a food service industry firm, and an individual commenter, suggested fruits and/or vegetables in any combination of servings should count as contributing to a reimbursable meal. A school district commented this was because they would rather put out a variety of fruit and vegetable options and tell students they may choose a total of any 3 different fruit and/or vegetables with the meal. A State department of education, school districts, school advocacy organizations, school food service staff, a professional association, and a food service industry firm commented that allowing students to select from a combination of fruits and vegetables to equal a required serving would take into account salad bars and self serve. Similarly, a school food service staff member commented that not allowing a combination would complicate self serve salad bar service. Two different State departments of education asked whether a student could choose half a cup of fruit and half a cup of vegetable to total a 1 cup minimum daily component serving for purposes of the proposed requirement that a reimbursable meal must include a fruit or a vegetable.

8.4 Support proposal permitting students to decline no more than 2 food items at lunch

Approximately seven submissions supported the proposed offer versus serve provision that would permit students to decline no more than two food components at lunch. A nutrition professional supported the proposed offer versus serve requirement for lunch for students in grades 4-12. This commenter stated that a preferable way to implement offer versus serve is to require small children to receive a complete

reimbursable meal until they are mature enough to make healthy decision. A policy advocacy organization supported the lunch offer versus serve provision, but commented that USDA should consider allowing schools to implement the alternate IOM option on request, i.e., decline 3 food items at lunch while taking at least a fruit or vegetable. A State department of education commented that the second IOM option would allow too much food to be declined. An advocacy organization commented that since between 80 and 90 percent of children do not consume the recommended servings of fruits and vegetables, the proposed lunch offer versus serve provision and the IOM secondary offer versus serve option would both help school meals close that gap since they both require a fruit or vegetable to be selected.

8.4.1 Support allowing students to declined more food items at lunch (IOM option 2)

Approximately 230 submissions expressed support for allowing students to decline more than two food components at lunch. Some commenters, including school districts and school food service staff, commented that FNS should allow students to refuse more items they will not eat. One school district commented that the SNDA-III findings show that, while most schools met the food group requirements of the current menu planning regulations, only 7 percent met all nutrient requirements for meals served. This commenter argued that this suggests the issue is what children take, not what schools serve. Further, this school district stated that what students take (as served) does not necessarily reflect what they actually eat. This commenter is concerned that the large increases in the amount of food required would increase costs without assuring that children are consuming the additional food, which would lead to increased waste.

A municipal department of health, a school district, and advocacy organizations recommended that USDA allow LEAs to implement the IOM alternative method (students may decline up to three items at lunch) upon request or through a waiver, should they determine that the alternative method better meets the needs of their students. An advocacy organization recommended that USDA adopt both of IOM's proposed offer versus serve alternatives to allow schools flexibility. A school food service staff member and a food service software company recommended that USDA implement the IOM's alternative recommendation on offer versus serve to minimize food waste. A different advocacy organization commented that the IOM's second alternative maintains nutritional integrity and student choice. A school food service staff member commented that in many schools true hunger is not an issue, and the secondary IOM option encourages students to take all choices, but allows them to turn down items they would likely not eat anyway and that would end up in the garbage.

A school district and an advocacy organization commented that IOM's second alternative is designed to offer additional flexibility to meet the broad range of nutritional and caloric needs within the populations served by each age/grade group. Further, a school district and advocacy organizations stated that this option would allow students more choice to control the amount of food on their plate, to reduce calories and, in some cases, reduce the intake of fat and sodium from breakfast meat/meat alternates. These commenters also stated that the secondary option would provide more flexibility for children to choose foods consistent with their allergies and other personal dietary needs, as well as religious or cultural food preferences.

8.4.2 Other

Approximately 15 submissions addressed the proposed offer versus serve requirement to permit students to decline no more than two food components at lunch. A school food service staff member requested clarification regarding this proposed provision, specifically what constitutes an "item" that can be refused. This commenter asked "if only two food items can be refused, [and] if there are two [vegetables] and two fruits offered (to meet minimum requirements) does this mean that a student could only refuse two of these four (and thereby required to take all breads, milk, and meat)?" A large metropolitan school district commented that there should be no minimum required number of meal components to qualify for a reimbursable meal. This commenter suggested that requiring students to take food components under a

food-based menu contributes to obesity by forcing students to take food. A school district commented that for school districts that do not use the food-based menu planning system at this time, the proposed offer versus serve requirements may present issues. This commenter suggested that the terminology in the proposed offer versus serve requirements be changes from “food items” to “food components,” for clarity.

8.5 Support proposal permitting students to decline no more than 1 food items at breakfast

Approximately five submissions supported the proposed offer versus serve provision that would permit students to decline no more than one food component at breakfast. A State department of education supported this provision and commented that the second IOM option would allow too much food to be declined. A policy advocacy organization strongly supported the proposed offer versus serve provision for breakfast, but suggested that USDA consider allowing schools to implement the alternate option upon request, i.e., allowing a student to decline two food items at breakfast. This commenter stated that the proposed offer versus serve option for breakfast maintains the nutritional integrity of the meal, but that it recognized the alternate method gives districts greater flexibility by allowing students more choice and better control of the amount of food on their plate. A school food service staff member commented that since between 80 and 90 percent of children do not consume the recommended servings of fruits and vegetables, the proposed breakfast offer versus serve provision and the IOM secondary offer versus serve option would both help school meals close that gap since they both require a fruit or vegetable to be selected.

8.5.1 Support allowing students to declined more food items at breakfast (IOM option 2)

Approximately 265 submissions expressed support for allowing students to decline two food components at breakfast. Many commenters discussed the IOM alternative offer versus serve requirements without distinguishing between lunch and breakfast. Therefore, most of the comments expressing support for the secondary IOM offer versus serve option for lunch described in Section 8.4.1 above are also expressing support for the secondary IOM offer versus serve option for breakfast. Therefore, this section only contains the comments that are unique to the proposed breakfast offer versus serve requirement.

A few advocacy organizations and a food bank recommended that USDA include both of IOM's proposed breakfast offer versus serve alternatives in order to allow schools the flexibility to best meet the needs of their students. A food bank and advocacy organizations suggested that USDA consider offering IOM's second alternative as an option for schools to request through their State Agencies. An advocacy organization commented that the second alternative provides a practical, cost effective way to increase the attractiveness of the SBP for children and reduce plate waste. Because the proposed rule requires additional servings of both grains and meat/meat alternates at breakfast, this advocacy organization stated that this second alternative maintains nutritional integrity and student choice by adjusting the number of food components that can be declined to accommodate the increased number of servings that must be offered. Two advocacy organizations urged FNS to adopt the IOM's alternate option for offer versus serve at breakfast, since there is no new funding to offset the cost increases for breakfast.

A trade association commented that while breakfast is an important meal for children, there may be unintended consequences for young children, particularly regarding the amounts of food required, which may exceed what a small child can eat. This trade association suggested modifying the offer versus serve requirements to allow students to refuse more items, so the child is not overwhelmed with the amount of food, and the cost of wasted food is not borne by school meal programs. Because the proposed breakfast meal pattern requirements may impact cost and participation, a professional association suggested that adopting IOM's alternative option may offer additional flexibility within the new system and allow students more choice and better control of the amount of food on their plate.

8.5.2 Other

Approximately 10 submissions addressed the proposed offer versus serve requirement to permit students to decline no more than one food component at breakfast, without explicitly expressing support or opposition. A school district and a school food services staff member recommended that FNS “not make mandatory” the proposed breakfast offer versus serve requirement that permits the refusal of only one item. One school district asked what was meant by “only one component” may be declined, and whether this was referring to one serving of one component. This school district also asked whether a ½ cup of fruit or juice is considered a serving, and whether fruit juice could meet the requirement, or would it need to be whole fruit. A school district commented that for school districts that do not use the food-based menu planning system at this time, the proposed offer versus serve requirements may present issues. This commenter suggested that the terminology in the proposed offer versus serve requirements be changes from “food items” to “food components,” for clarity.

8.6 Support requiring offer versus serve standards at all grade levels

Approximately 360 submissions expressed support for mandating offer versus serve at all grade levels. Under the current (and proposed) regulations, offer versus serve is mandatory at the high school level, but is optional for states at the lower grade levels. Several commenters, including school districts, school food service staff, a professional association, a food service industry firm, and a food service software company, suggested that all schools should be mandated to use offer versus serve, as a means of minimizing plate waste and reducing financial loss. A few commenters, including school districts, stated that mandating offer versus serve at all grade levels as a method to reduce waste and control costs would enhance the overall acceptability of the rule because the meal pattern changes proposed would create significant waste in schools since the food increases would be beyond the physical capacity for many students to ingest, according to these commenters.

8.7 Concerns about food waste (only offer versus serve waste issues)

Approximately 3,550 submissions expressed concerns about the proposed offer versus serve requirements as they impact and relate to food waste. Many concerns about waste are expressed throughout the summaries of comments in other sections. This summary will focus on comments that convey concerns about food waste not otherwise conveyed elsewhere.

Several commenters, including school districts, school food service staff, school advocacy organizations, a food manufacturer, an academic commenter, a Federal elected official, and individual commenters, stated that implementing the proposed offer versus serve requirements would unnecessarily increase costs due to plate waste. Some commenters, including a State department of education, school districts, school food service staff, a nutrition professional, and food service industry firms, commented that the proposed changes would create significant waste in school meal programs, particularly at the elementary school level. School districts, a State department of education, a municipal health department, a farm entity, school food service staff, a food service industry firm, a nutrition professional, and an individual commenter asserted that children do not have time to eat the proposed increases in portion sizes, which would result in increased plate waste.

A few commenters, including a school district, school food service staff, and an individual commenter, argued that children know which foods they will not eat, and requiring them to take those foods onto their trays would not result in better nutrition, but would cause waste and higher costs. Similarly, school districts, a school food service staff member, an industry association, and an individual commenter argued that the increase in required selection of fruits and vegetables would result in substantial food waste that cannot be re-served and would end up in trash cans. One school district commented that “we can’t buy food and throw it away because it looks good on paper.” A school food service staff member commented on the environmental waste contributions of the additional disposable cups and lids that would be thrown away along with the canned or frozen fruit the school would put inside.

An advocacy organization commented that the potential losses to plate waste could be up to a billion dollars. A food service industry firm stated that increased trash not only wastes the cost of the products thrown away, but also additional costs for materials, trash storage, pickup, and custodians. A policy advocacy organization commented that increased food waste increases the cost of producing meals, which would likely result in a decrease in local and regional foods in school meals because the value of local and regional foods would be pitted against the artificially low costs of non-local and commodity foods.

One school district commented that it needs the money that would be wasted by children throwing larger portion sizes in the garbage to improve the quality of the foods it is already offering. Similarly, a food manufacturer commented that the wasted funds from adding components that would go into the trash cans would better be used if they were available to spend on the improvement of foods that will be consumed. This manufacturer commented that any increased cost incurred by schools has a trickledown effect impacting the manufacturers working to provide the best quality products for the program at the most economical price possible.

Several commenters, including school districts, an advocacy organization, a school, an academic commenter, and school food service staff, commented that offer versus serve was instituted to address a food waste problem, and mandating students take the fruit or vegetable component would go back to increasing plate waste again. An individual commenter stated that food waste is a sensitive issue in their current economically challenged area. Another individual commenter stated that the top complaint in their school district from parents and taxpayers is food waste. Several commenters, including individual commenters, school food service staff, an academic commenter, a food manufacturer, and a school food service software company asserted that the proposed regulations would increase food waste, further exacerbating an already existing problem and the perception of wasteful spending in the program.

A school food service company commented that if food waste becomes an issue after implementation of the final rule, criticism regarding the waste could be stronger than the support for any improvements in the program. A school district and a school food service staff member commented that forcing students to take items they would throw away can create an atmosphere of frustration among cafeteria staff. One individual commenter stated that a food waste consciousness should be inherent in the NSLP/SBP program – in spirit, but also through incentives and educational programs.

Other commenters, including a State council on food policy and an individual commenter, argued that FNS must adequately study the amount of waste that would occur as a result of the mandated quantity of food selection. A Federal elected official requested that USDA take all necessary steps, including closely examining the HUSSC requirements, to ensure the final regulations do not result in a significant increased wasting of food. A State department of agriculture commented that the SNDA-III and SMI studies (cited for USDA's conclusion that adding fruits and vegetables to the menu would not result in additional plate waste) did not evaluate the impact given the requirement to take the fruit or vegetable.

A few commenters, including school districts and school food service staff, requested that there be a pilot study on waste. One school district piloted the proposed breakfast meal pattern at one of its higher participation free/reduced elementary schools and found that an average of 60 percent of fruit was returned at a cost of \$0.25 per student per day. A school food service staff member commented that double portions should not be allowed until the new provisions can be deemed feasible, and that FNS should eliminate the proposed offer versus serve requirements if plate waste or obesity rises. A professional association, a school district, a school food service staff member, and a food service industry firm urged USDA to provide oversight and monitoring of what changes are working, and which are resulting in plate waste, as part of the implementation of the final rule. A large metropolitan school district requested that FNS provide detailed guidance that discusses how to minimize food waste for the mandated fruit and vegetable components.

A school district and a school food service staff member specifically cited the proposed requirement for all grains to be whole-grain rich as something that would increase plate waste due to decreased

acceptability. A food service industry company commented that uneaten whole-grain bread/buns and brown rice, along with uneaten fruits and vegetables, are the items most likely to fill a trash bin. A food manufacturer expressed concern that moving away from popular processed items would increase waste and reduce consumption of key nutrients provided by those foods.

Several commenters, including a State department of education, school districts, a policy advocacy organization, a trade association, a school food service staff member, and an individual commenter, asserted that a cup of fruit along with the other three components is too much food at breakfast, and that it would be difficult for a small child to consume. School food service staff members and an individual commenter further stated that students do not have enough time now to eat their breakfast and are forced to throw some away, and adding items they must take would result in increased plate waste and resistance from students.

An individual commenter stated that the current method of offering many choices of seasonal fruits and vegetables has been very successful and reduces plate waste. Some commenters, including school food service staff, commented that a simple increase in the offerings of additional fruits and vegetables should increase consumption and still allow students a choice, without requiring them to take it resulting in increased waste. A few commenters, including a school district and a State council on food policy, proposed an expansion of the Fresh Fruit and Vegetable Program, which they asserted would allow schools to offer fruits and vegetables to students when they are hungry and in amounts they are able to consume, thereby reducing waste. A school district, school food service staff, a municipal health department, and an individual commenter suggested that implementing more salad bars in schools would alleviate food cost and plate waste concerns.

8.8 Other comments on offer versus serve regulations

Approximately 575 submissions included comments on offer versus serve regulations that did not fit neatly into the issue categories above. An industry association suggested that FNS provide guidance to help schools implement the new offer versus serve requirements. A school asked what resources are being planned to assist direct staff in educating students on the new offer versus serve requirements. An industry association, a city department of education, and advocacy organizations recommended that FNS, as part of ongoing program evaluation, assess the outcome of the new offer versus serve requirements on student fruit and vegetable consumption, overall nutritional integrity of the school meal, cost of implementation, and plate waste.

Several commenters, including school districts, a State department of education, school food service staff, a food service industry firm, a food service software company, and a professional association, recommended that USDA specify the minimum number of food items that must be offered, as the rule already states the minimum number of items that must be served. These commenters argued that specifying an absolute number risks limiting menu choices, whereas specifying the minimum number of items that must be offered allows for variance. An individual commenter asserted that determining what qualifies as a meal by what is taken rather than what is refused would simplify meal counting.

A policy advocacy organization commented that offer versus serve requirements can be confusing if some items are required weekly and others daily, and that some of the proposed standards are confusing as written. For example, this commenter stated that many food service directors commented that it was unclear if students are required to take a fruit and vegetable at lunch and what the portion size would be. One school district commented that with offer versus serve meal service, the determination of a reimbursable meal can be difficult, and recommended that FNS maintain the current wording. Similarly, a school district recommended that FNS let the current offer versus serve requirements stay in place. An advocacy organization and a food bank commented that the current offer versus serve requirements reduce plate waste, and that the current system has been used by innovative schools to promote fruit and vegetable consumption through state-funded healthy meals or fresh fruit and vegetable projects.

A company commented that offer versus serve should be redefined to mean (1) the inclusion of choices of menus; and/or (2) choices within the food items offered as part of the meal. This commenter stated that when offer versus serve was implemented, it was in response to a Congressional mandate to reduce plate waste, and this commenter does not believe Congress intended that mandate as a means to reduce food costs or to deny students the nutrients they need. This commenter stated that offer versus serve continue to dilute the nutritional integrity of the NSLP and to refute all the effort that went into the proposed rule.

A school food service staff member discussed their school district's piloted expansion of the self-serve bar. This commenter stated that they have found that having a variety of fruits and vegetables available every day increases student acceptance of fruits and vegetables while greatly reducing plate waste and the cost associated with forcing students to put a specific type of fruit or vegetable on their plate.

An individual commenter discussed behavioral economics research that they asserted shows that you cannot force students to consume fruits and vegetables, because when people feel pressured to act a certain way, they choose to rebel and do the opposite of what is expected of them. This commenter also stated that researchers have found that when students believe they are free to choose, they are less likely to resist the presented options, and are more likely to make an advantageous decision.

One school district referred to SNDA-III findings that only 7 percent of schools met all nutrition requirement for meals served and commented that this issue is, thus, what students take, not what schools serve. This commenter argued that because what students take does not necessarily reflect what they eat, schools have and will continue to strive to meet nutrition standards and menu requirements. The school district commented that the greater need is educating children to make healthier choices. This same school district commented that the proposed rule was silent regarding offering variety in menus, and asked whether a school could offer starchy vegetables every day if they always have a wide variety of fruits and vegetables available (since a student can refuse two items at lunch).

One school district commented that the proposed rule would not result in good nutrient intake because the core macronutrients can be declined, but a micronutrient, low calorie contribution source is required. This commenter urged FNS to revise the proposed rule to require the entrée and one other component – perhaps a fruit or vegetable to support health initiatives to increase the consumption of fruits and vegetables.

One individual commenter argued that the offer versus serve requirements should not be mandatory at the high school level. A State's department of health services and department of education, and another State's department of education commented that they did not support mandating offer versus serve for all grade levels. These commenters stated that individual NSLP sponsors should retain the option to decide if offer versus serve is a benefit to their program or if a serve-only method is best for K-8 schools.

A State department of education asked whether a definition of entrée would be necessary with the food-base menu planning approach. An advocacy organization urged FNS to allow students the flexibility to make the best fruit and vegetable choices. As noted above in Section 8.2, some commenters, including school food service staff, recommended that the meal pattern table be modified to indicate "servings" rather than "cups." Some school food service staff members discussed how they implement current offer versus serve requirements in their schools. A large metropolitan school district suggested that, to further reduce waste, USDA should consider incorporating dairy in an offer versus serve model, given the higher risk for lactose intolerance among many groups, including African Americans, Asian Americans, and Hispanic Americans.

9. Proposed monitoring changes

9.1 Proposal to eliminate the SMI review and require State Agencies to monitor school meals through CRE Performance Standard 2

9.1.1 Support eliminating SMI review

Approximately 15 submissions expressed general support for eliminating the SMI review and combining it with the CRE reviews, including food service staff, a health care association, advocacy organizations, a State department of education, a trade association, and a nutrition professional. A nutrition professional supported a re-emphasis on monitoring quantities of food offered. A food service software company stated that a comprehensive approach to compliance and monitoring emphasizing continuous quality improvement, training and technical assistance is critical to the successful implementation of the proposed meal regulations.

9.1.2 Concerns with eliminating SMI review

Approximately six submissions expressed concerns with eliminating the SMI review. A school district stated that eliminating the SMI would cause problems for smaller districts because they do their own nutrient analysis and they have limited resources. An academic commenter claimed that State Agencies do not have the resources to implement written corrective action plans with the numerous non-compliant SFAs.

9.1.3 Other comments on SMI review versus CRE review

Approximately 120 submissions addressed other issues relating to SMI review and/or CRE review. A school food service staff member asserted that food-based menu planning cannot distinguish that target nutrients are being met. Thus, this commenter recommended nutrient menu planning be continued with food-based menu planning because it is the only method that can document target nutrients are being met.

An individual commenter claimed that this review would not be simplified due to the continued administrative burdens, plus the new breakfast menu responsibilities. This commenter suggested that State Agencies should be required to provide electronic files of all forms necessary for the CRE.

An individual commenter asked for clarification as to when the new cycle would be implemented as well as clarifying the statement "the Secretary has the authority to establish a different review period." A State department of education disputed the claim that SMI review would no longer be required, arguing that the SMI is a nutrient analysis process so it has not gone away. A State Agency director for child nutrition programs and a State department of education requested that the Agency rename the method of analysis to something other than SMI since the proposed rule states that SMI reviews would end.

9.2 State Agencies would be required to monitor the four dietary specifications and compliance with meal pattern

9.2.1 Support

No submissions expressed this view.

9.2.2 Oppose

Approximately 110 submissions addressed opposition to State Agencies being required to monitor the four dietary specifications and compliance with the meal pattern. An individual commenter stated generally that reducing the number of nutrients being analyzed does not affect the workload since all food data must be entered. A State department of education and an academic commenter also discussed the added burdens on the State Agencies to conduct nutrient analysis for each SFA, in addition to monitoring requirements for compliance and certification procedures that each SFA is meeting the nutrient targets in order to be reimbursed.

A State department of education and a school food service staff member commented that if nutrient targets are to be assessed with menu analyses, then FNS should evaluate the cost effectiveness of this approach, including but not limited to evaluating the cost of software and training to use the software, staff time dedicated to each menu analysis, and the results compared to the menu pattern.

9.2.3 Other

Approximately 15 submissions addressed State Agency review in ways not discussed above. A few commenters claimed that to determine compliance with the sodium requirements, a regular nutrient analysis would need to be conducted. A State department of education and a food service software company expressed concern over the extra burden of conducting nutrient analysis for all districts on State Agencies and that it could result in unintentional noncompliance for a period of up to 3 years until the SFA receives its compliance review. A school food service staff member stated that if the CRE analysis does not use a weighted average, then the number is not reflective of what students are actually receiving. An individual commenter asked whether the State Agency analysis would be based on what is offered or what is served.

9.3 Addition of breakfast to CRE review

9.3.1 Support

Approximately 25 submissions expressed support for the proposed addition of breakfast to the CRE review, including advocacy organizations, trade associations, a health care association, a professional association, a food bank, State departments of education, and a nutrition professional. As a State department of education commented, breakfasts often contain less nutrient-dense foods than lunch, such as sweetened cereals, sausage, breakfast buns, muffins, and pastries.

9.3.2 Oppose

Approximately 110 submissions opposed the addition of breakfast to the CRE review, including a school advocacy organization, school food service staff, nutrition professionals, a professional association, a food service industry company, school districts, a State department of education, and an individual commenter. Several commenters stated that the CRE reviews should include lunch only to offset the increased time and effort involved to conduct the reviews every 3 years rather than every 5 years. A few commenters expressed concern over the increased cost concerns from the added requirement of breakfast. Two of the commenters claimed it was an unfunded mandate.

9.3.3 Other

Approximately 105 submissions addressed the addition of breakfast to the CRE review without explicitly expressing either support or opposition. Three of the commenters asked for clarification on the requirement for conducting breakfast reviews. A State department of education opposed including breakfast and lunch into the review for every building. This commenter recommended a percentage be established for these reviews.

9.4 Increasing monitoring of school meals from every 5 years to every 3 years

9.4.1 Support

Approximately 27,925 submissions expressed support for the proposed increasing monitoring of school lunches and breakfasts from every 5 years to every 3 years, including a State department of education, a State department of health services, a county department of public health, a community organization, professional association, healthcare associations, food banks, advocacy organizations, trade associations, nutrition professionals, and an individual commenter. Several commenters claimed that increasing frequency of the reviews would allow states to provide a higher level of technical assistance, reduce noncompliance with the new standards, and help ensure successful implementation of the new meal regulations.

A State department of health services claimed that there would be no added burden of increased frequency of reviews because a CRE review should already be present and readily available at the school at all times. A nutrition professional claimed increased frequency of review would help State Agencies identify menu-planning problems and provide technical assistance in a timely manner. A food bank supported more frequent reviews for overall program quality, especially if there is staff turnover. Finally, an advocacy organization and a food bank claimed that the proposed review period would allow states to

take fiscal action sooner against a school for failing to meet the standards after providing technical assistance and corrective action.

9.4.2 Oppose

Approximately 590 submissions expressed opposition to increasing monitoring of school lunches and breakfasts from every 5 years to every 3 years. Commenters that opposed increased frequency of review included school districts, food service industry companies, a State elected official, schools, school food service staff, a school advocacy organization, professional associations, a State department of public instruction, State departments of education, nutrition professionals, and individual commenters. The majority of commenters opposed a 3-year review cycle because there is already little time for technical assistance during the 5-year review and states struggle to keep up with the demands of a 5-year review cycle. These commenters suggested retaining the 5-year review cycle, which would allow State Agencies more time to provide technical assistance and training. A school district suggested that providing technical assistance to schools would be more effective than changing the frequency of reviews. An advocacy organization argued that with the recent national trend toward smaller state government, State Agency resources should be applied towards technical assistance and training. This commenter recommended that FNS develop a “universal systemized mechanism” for evaluation and assessment that would allow schools to conduct robust self-assessments and improve accountability by using enhanced technology.

The majority of commenters asserted that state workers would not be able to handle the increased workload a 3-year review cycle would create. Some commenters added that in order to accommodate a 3-year review cycle, the quality of their reviews would suffer.

Many commenters expressed concern over the added costs resulting from changing to a 3-year review cycle. Other commenters claimed that the reviews are time consuming and more money would be needed to move to a 3-year review cycle. Some commenters stated that the increased paperwork of a 3-year review cycle and 2-week document production would triple the cost of completing the reviews. Two school districts claimed that additional staff would need to be hired and asked whether the Agency would provide funding for those hires.

Some commenters urged that the increased frequency of review should not be mandatory, claiming it is an unfunded mandate. A school district claimed that a 3-year review cycle is unrealistic in light of the current economic crisis. A State elected official added that the funding provided by the bill are short-term and likely inadequate to cover the full costs to the states.

Some commenters suggested that the inspection review frequency should be based on past school performance. A school food service technology company suggested that districts demonstrating control over their programs not require onsite reviews every 3 years, but only every other cycle. This commenter stated that states could utilize software that monitors program performance against established benchmarks and if a change in status is noted, additional efforts can be made to ensure program integrity. A school district stated that only Local Educational Agencies (LEAs) found non-compliant should warrant a more frequent review than the 5-year review cycle.

9.4.3 Other

Approximately 150 submissions addressed the proposed increasing monitoring of school lunches and breakfasts from every 5 years to every 3 years, but did not explicitly express support or opposition. A trade association suggested a simplified review process that would focus on key compliance issues, such as providing variety and the correct fruit and vegetable portion sizes, meeting whole grain requirements, and reducing sodium and saturated fat to target levels. An individual commenter recommended that states do targeted analyses using risk criteria.

A State department of agriculture and a State department of education suggested that the new 3-year review cycle should begin at the end of the current 5-year review cycle. A State department of education recommended that the Agency use a 1-year grace period when changing from the 5-year review cycle to the 3-year review cycle to allow State Agencies the opportunity to focus on training and compliance of the new meal standards.

An individual commenter requested that the Agency clarify whether states would still be required to conduct “additional administrative reviews” if they are on the 3-year review cycle. A school district questioned how the reimbursement performance based rate eligibility would be monitored and requested guidance from the Agency. Finally, a community organization recommended that the Agency reduce the review cycle frequency to 1 year.

9.5 Requiring State Agencies to review menu and food production records for a two-week meal period

9.5.1 Support

Approximately eight submissions expressed support for requiring State Agencies to review menu and food production records for a two-week meal period: a policy advocacy organization and two nutrition professionals. The policy advocacy organization stated that this more comprehensive approach, with emphasis on continuous quality improvement and training and technical assistance, is critical to the successful implementation of the proposed rule.

9.5.2 Oppose

Approximately 325 submissions expressed opposition for requiring State Agencies to review menu and food production records for a two-week meal period. Most of these commenters, including school districts, State departments of education, State departments of agriculture, school food service staff, school advocacy organizations, professional associations, trade associations, food service industry, food banks, schools, academic commenters, nutrition professionals, and individual commenters, claimed that 1 week is a reasonable amount of time to determine if a SFA meets the meal pattern requirements.

Several commenters expressed concerns that the proposed requirement would create unreasonable workload burdens that would negatively impact the job performance of State Agency and school staff. Several commenters expressed concern about the increased time that would be required of State Agency staff reviewing 2-weeks worth of documents. A school food service staff member stated that it currently takes them 30 hours to collect the details for a nutrient analysis for 1 week and adding another week would double that time commitment. A school advocacy organization added that this increased strain on school and district level staff could discourage school districts from adopting voluntary meal patterns and standards. Two individual commenters also voiced concern that to meet the 2-week nutrition analysis, it would decrease the amount of time available to provide technical assistance and support.

Commenters also expressed concerns about the additional cost burdens they claimed would result from the proposed 2-week review period. Some commenters asserted that there would be increased administrative burdens associated with longer and expanded reporting requirements. A professional association claimed that this was another unfunded mandate and urged FNS to provide appropriate Federal resources to support the increased reporting. Some commenters stated that the increased paperwork of a 3-year review cycle and 2-week document production would triple the cost of completing the reviews.

9.5.3 Other

Approximately three submissions addressed the record review period but did not explicitly express support or opposition for the proposed two week period. A State department of education proposed the development of an inventory and menu analysis tool for State Agencies that would be used in conjunction with the SFA by reviewing ingredients in the storage areas and a joint review of a monthly menu.

9.6 Other comments on monitoring

Approximately 545 submissions address monitoring issues in ways that did not fit into the issue categories discussed above. Several commenters asked that the State Agency reviews, inspections, and monitoring reports be made available on-line to the public. A policy advocacy organization urged the Agency to ensure a fair and consistent system of certification to enforce the new standards. A State department of education suggested that if a school has met requirements for an HUSSC award under the proposed rules, that school should be considered as planning menus that meet the new standards, and should be certified without additional review. A school district noted that although schools would no longer analyze meals, there still would be a need to monitor the meals to ensure that the standards are being met for sodium, calories, and saturated fat. This commenter questioned how the school districts would know if they are in compliance.

A nutrition professional suggested that, prior to the rule being finalized, the Agency focus its efforts on developing a simplified monitoring tool for State Agency to use in identifying if the SFA is having problems in the procurement, menu planning, meal preparation, or service areas. A school district recommended that nutrient analysis for lunch and breakfast not be mandatory. It also claimed there was a need for diabetic meals carbohydrate tracking. An advocacy organization expressed support for the proposed more rigorous monitoring requirements.

An individual commenter claimed that alternative approaches to monitoring menus could be done initially to ensure schools are meeting the food-based meal patterns. A State department of education claimed that software companies must be given enough time to modify their existing programs for conducting future analyses.

An advocacy organization provided recommended language for section 207's monitoring procedures: "Monitoring must include the following considerations: presentation of food, flow of the lunch line, time children have to eat, student surveys, staff surveys. Require evaluators to meet with district Wellness Committee. Evaluations must include consideration of which changes to the school nutrition programs are working to maximize intake and minimize plate waste. Devise guidance and regulations concerning the monitoring and evaluation of Wellness Policies."

Two advocacy organizations recommended that the Agency adopt a review process that assesses a broader sampling of schools with a less intensive review process so that State Agencies could use review results to better focus limited resources to SFAs with the highest levels of noncompliance. These commenters urged the Agency to consider the following approaches to further strengthen accountability, meal quality, and compliance in the school meal programs:

- Add criteria on school selection to the proposed regulations, giving more frequent reviews to schools with prior non-compliance.
- Review multiple schools per school district during each review cycle and include at a minimum one elementary, one middle, and one high school. For large school districts, more schools should be reviewed as needed, to ensure that the full breadth of menus offered throughout the district is reviewed.
- Develop a more simplified assessment approach to decrease the burden on SFAs and State Agencies and allow more schools to be assessed during each review.

One advocacy organization recommended that FNS develop guidance to assist LEAs, advocates, and parents to conduct self-assessments that could be conducted in addition to formal compliance evaluations. This commenter further recommended that FNS have schools report on compliance to the district, who would report to the State Agency, who would report to USDA, so that compliance reports could be used by State Agencies to target visits with a focus on the schools with non-compliance issues. A school district asked the Agency to clarify what the intent is of State Agencies' reviews of records/labels. It stated that labels are not always readily available at the school. An advocacy organization recommended

that the monitoring procedures be expanded to include an examination of plate waste. Some commenters suggested that enforcement efforts would be improved by increasing the number of monitoring visits to school nutrition programs.

10. Enforcement

10.1 State Agencies would be required to take immediate fiscal action if a food component is missing (as currently done)

10.1.1 Support

A food bank expressed support that State Agencies would be required to take immediate fiscal action if a food component is missing after providing technical assistance and corrective action.

10.1.2 Oppose

Approximately 10 submissions expressed opposition to the proposal that State Agencies would be required to take immediate fiscal action if a food component is missing. Two school food service staff members asserted that it is unfair for districts that are doing everything possible to meet the new guidelines that undergo a site review and receive a fiscal penalty if they are not up to standards. An individual commenter argued that taking fiscal penalties are counter-productive to the goals of the program and taking away more resources from a school is not going to help them with compliance.

A school food service staff member and an individual commenter claimed that this enforcement provision could lead to an adversarial relationship between State Agencies and SFAs. These commenters suggested that more emphasis should be on State Agencies providing technical assistance, not fiscal action.

10.1.3 Other

Approximately three commenters addressed this proposed provision, but did not explicitly express support or opposition. A State department of agriculture suggested the Agency define “immediate fiscal action” and “repeated violations,” as those terms apply to menu planning and reimbursable meals observed. A professional association asked for clarification on the phrase “State Agency would be required to take immediate fiscal action.”

10.2 Repeat violations

10.2.1 State agencies must take fiscal action if technical assistance and corrective action have not resolved violations of the vegetable subgroup and milk requirements

10.2.1.1 Support

Approximately four submissions expressed support for the proposed requirement that State Agencies must take fiscal action if technical assistance and corrective action have not resolved violations of the vegetable subgroup and milk requirements. These commenters included trade associations, general advocacy organizations, and a food bank. A trade association and an advocacy organization commented that this proposed provision would increase accountability in the programs and improve compliance and meal quality.

10.2.1.2 Oppose

Approximately three submissions opposed the proposed requirement that State Agencies must take fiscal action if technical assistance and corrective action have not resolved violations of the vegetable subgroup and milk requirements. These commenters included a school service staff member, a professional association, and a State department of education. A school food service staff member argued that it would be unfair for districts that are doing everything possible to meet the new guidelines that undergo a site review and receive a fiscal penalty if they are not up to standards. A professional association commented that it does not support expansion of the fiscal action to include fines, stating that this would

be a redundant layer in addition to the existing fines and is unprecedented in other education programs. A State department of education argued that schools should not be punished if they are unable to acquire and purchase food items due to circumstances beyond their control.

10.2.1.3 Other

No submissions addressed this issue.

10.2.2 State agencies have discretion to take fiscal action if technical assistance and corrective action have not resolved violations of the food quantity and whole grain requirements, and the four dietary specifications

10.2.2.1 Support

Approximately 25 submissions expressed support for the proposal that State Agencies have discretion to take fiscal action if technical assistance and corrective action have not resolved violations of the food quantity and whole grain requirements, and the four dietary specifications. These commenters included general advocacy organizations, a trade association, policy advocacy organizations, and a food bank. An advocacy organization stated that this part of the proposal would increase accountability in the programs and improve compliance and meal quality.

10.2.2.2 Oppose

Approximately three submissions expressed opposition for the proposal that State Agencies have discretion to take fiscal action if technical assistance and corrective action have not resolved violations of the food quantity and whole grain requirements, and the four dietary specifications. These commenters included a professional association, a State department of education, and a child nutrition company. A professional association stated that it does not support expansion of the fiscal action to include fines, stating that this would be a redundant layer in addition to the existing fines and is unprecedented in other education programs.

10.2.2.3 Other

No submissions addressed this issue.

10.2.3 Other comments on repeat violations

Approximately 105 submissions addressed repeat violations in ways that did not fit in the issue categories discussed above. A school district and an individual commenter asked what the State responsibilities are for assessing claims and taking fiscal action for repeat violations. A State department of agriculture suggested the Agency define “immediate fiscal action” and “repeated violations,” as those terms apply to menu planning and reimbursable meals observed.

10.3 Other comments on enforcement issues

Approximately 30 submissions addressed enforcement issues that did not fit into the other enforcement issue categories above. Some commenters generally supported stronger compliance and enforcement efforts. A school district commented that section 208 of the Healthy, Hunger-Free Kids Act of 2010 requires that all foods sold during the school day must follow the local Wellness Policy and food and beverage guidelines set by the district. This commenter asserted that the school meal programs should not be responsible for enforcing compliance with this requirement for food and beverage sales outside of the program. Another school district asserted that there are many things identified as “state” responsibilities that need to be defined and clarified, such as assessing claims for repeated violations, breakfast reviews, additional administrative reviews, and analysis of menus. This school district stated that these responsibilities should not be left to the states to interpret. A State department of education suggested that the Agency provide clear guidance on the implementation of the regulation and the consequences that would be imposed on SFAs if found to be noncompliant. Another commenter asserted that State Agencies should have greater latitude in determining when fiscal action is necessary, and

suggested there be more emphasis on State Agencies providing technical assistance, as opposed to fiscal action.

11. Miscellaneous proposed changes

11.1 Schools required to identify the foods composing the reimbursable meal(s) for the day at or near the beginning of the serving line

11.1.1 Support

Approximately 15 submissions expressed support for the proposed requirement that schools must identify the foods composing the reimbursable meals for the day at or near the beginning of the serving line. These commenters included trade associations, advocacy organizations, State departments of education, nutrition professionals, and individual commenters. The majority of commenters stated that by placing these food items near the beginning of the line, it would help reduce confusion by helping students identify healthy, balanced meals, and would also avoid the unintentionally purchase of items not included in their subsidized meal.

11.1.2 Oppose

Approximately four submissions opposed the proposed requirement that schools must identify the foods composing the reimbursable meals for the day at or near the beginning of the serving line. A school food service staff member asserted that this provision would overtly identify those students that are receiving free or reduced price meals. Similarly, an academic commenter suggested that FNS should eliminate this provision to avoid identifying and stigmatizing low-income children. A school food service staff member argued that this part of the proposal could force programs to use prepackaged meals and increase plate waste.

11.1.3 Other

A trade association noted that the proposed rule diverges from the IOM report recommendations with this provision.

11.2 Crediting

11.2.1 Crediting of any snack-type fruit or vegetable products toward the fruit or vegetable component is not permitted

11.2.1.1 Support

Approximately 135 submissions expressed support for the proposed prohibition on the crediting of any snack-type fruit or vegetable products toward the fruit or vegetable component. These commenters included school advocacy organizations, trade associations, State departments of education, policy advocacy organizations, school districts, community organizations, school food service staff, nutrition professionals, and individual commenters. Commenters asserted that the current permissibility of these products sends the wrong nutrition messages to children. Other commenters added that children should be provided with a wide variety of whole fruits and vegetables.

11.2.1.2 Oppose

Approximately 155 submissions opposed the proposed prohibition on the crediting of any snack-type fruit or vegetable products toward the fruit or vegetable component. These commenters included school districts, school food service staff, a professional association, and individual commenters. Several commenters recommended that FNS allow all 100% fruit items. Commenters noted that the whole-fruit requirement is expected to contribute substantially to the cost of compliance, and suggested that this proposed crediting restriction should be relaxed for foods prepared on-site in a school kitchen where staff control the ingredients added and processing. One company requested clarification on whether juice concentrate products such as frozen fruit juice bars would still be allowed and creditable. Another

commenter asserted that this proposed requirement would micromanage the form/shape of a fruit, and that if mashed apple sauce is acceptable, fruit strips should be too. This commenter further stated that the elimination of fruit strips would increase the weight and, therefore, the likelihood of worker injuries, on outdoor satellite cart service.

11.2.1.3 Other

A trade association noted that the proposed rule diverges from the IOM report recommendations with this provision.

11.2.2 ¼ cup dried fruit = ½ cup of fruit (toward fruit component requirement)

11.2.2.1 Support

Approximately 20 submissions expressed support for the proposed credit formula ¼ cup dried fruit = ½ cup of fruit. These commenter included a nutrition professional, school districts, school food service staff, school advocacy organization, State departments of education, food manufacturers, and an individual commenter. A State department of education commented that the proposed requirements do not address cooked leafy greens, which when cooked, reduce significantly in volume. Similarly, a nutrition professional asked that salad greens be designated as “raw salad greens,” because cooked greens should be credited the same as other vegetables. A school food service staff member and a professional association noted that it is important to have portable, storable components with high student acceptability.

11.2.2.2 Oppose

Approximately five submissions opposed the proposed credit formula for dried fruit: ¼ cup dried fruit = ½ cup of fruit. These commenters included a school district, a trade association, a raisin packing company, and a farm entity. A trade association requested that actual solids equivalence be considered for dried and freeze dried fruits. A farm entity suggested that a more accurate way to determine the correct serving size for dried fruit would be to use a scoring system based upon nutrition levels of the fruit. A raisin packing company suggested that the crediting formula should be ¼ cup dried fruit = 1 cup fruit (at least for raisins), because ¼ cup of raisins contains the same nutrition as a cup of grapes.

11.2.2.3 Other

Approximately 135 submissions addressed the crediting of dried fruit without explicitly expressing support or opposition for the proposed formula. A school district asked FNS to revise the proposed rule to allow 100 percent of fruit items, such as whole and semi-dried fruit. A farm entity claimed that historic drying ratios recorded by the USDA should be used to create accurate credit conversion equations for individual dried fruits.

11.2.3 1 cup of leafy vegetables = ½ cup of vegetables (towards vegetable component requirements)

11.2.3.1 Support

Approximately 10 submissions expressed support for the proposed credit formula 1 cup of leafy vegetables = ½ cup of vegetables. These commenters included a school advocacy organization, State departments of education, school district, nutrition professional, and an individual commenter.

11.2.3.2 Oppose

Approximately 10 submissions opposed the proposed crediting formula 1 cup of leafy vegetables = ½ cup of vegetables. These commenters included school districts, school food service staff, and an individual commenter. Commenters claimed that the amount of leafy vegetables required is too much for children to eat and would lead to plate waste.

11.2.3.3 Other

One commenter requested clarification regarding whether this proposed provision included broccoli and whether it included cooked and raw vegetables, asserting that two cups of cooked spinach is a lot of spinach. Another individual commenter asserted that clearer guidance is needed for crediting salads, since they are not 100 percent leafy greens.

11.2.4 Tomato paste and puree would be credited based on volume served (currently credited based on whole-food equivalency)

11.2.4.1 Support

Approximately 110 submissions expressed support for the proposed crediting change that tomato paste and puree would be credited based on volume served, as opposed the whole-food equivalency. These commenters included a policy advocacy organization, a school district, and individual commenters.

11.2.4.2 Oppose

Approximately 390 submissions expressed opposition to the proposed crediting change that tomato paste and puree would be credited based on volume served, instead of whole-food equivalency. These commenters included school districts, school advocacy organizations, trade associations, food manufacturers, a food service industry company, school food service staff, a law firm, a general advocacy organization, a State department of education, a farmer, and individual commenters. Numerous commenters recommended that tomato paste be credited as outlined in the Food Buying Guide for Child Nutrition Programs where they are credited on their “as if single-strength reconstituted basis” rather than on the actual volume as served. A school district argued that these reductions in tomato paste and puree crediting are not backed up by data. A school district and a food manufacturer recommended that purees and pastes be credited on the basis of their individual nutrient concentrations rather than by volume. A few commenters noted that for manufacturers of products with CN labels that credit the current fruit-vegetable component from the tomato content of the item, increasing the ingredients to a one-to-one ratio by volume in order to still claim the credit may result in products that are unacceptable.

11.2.4.3 Other

Approximately 10 submissions addressed the proposed crediting change for tomato paste and puree, but did not explicitly express support or opposition for the change. A food manufacturer expressed concern over the potential increase in costs related to this proposed crediting change to manufacturers as they would need to reformulate and submit new label applications to implement this proposed change. A State department of education and an individual commenter asked whether the tomato paste and puree would count toward the vegetable requirement. One company opposed the proposed change as not acknowledging the concentration nutrition of concentrated tomato products.

11.2.5 Other comments on crediting

Approximately 155 submissions addressed crediting issues not otherwise addressed above, including school districts, school food service staff, a State department of education, a teacher, food manufacturers, a trade association, and individual commenters. Some commenters recommended keeping the current crediting rules in place due to serious concerns raised over the proposed requirements. A State department of education and an individual commenter asked for clarification on how to credit vegetable purees that may be incorporated into breads, sauces, and soups. A school district and a school food service staff member recommended recognition of fruit and grain components in items such as crisps and cobblers using volume as the measure.

An individual commenter argued that there is a contradiction in the proposed rule relating to dried fruit and tomato paste and puree. Another individual commenter asserted that the proposed requirements do not offer clear guidance on crediting food offered on salad bars. A trade association requested that the final rule consider fruit and vegetable juice blends as contributing to both the fruit and the vegetable requirements.

11.3 Fortification

11.3.1 Formulated grain-fruit products would not be allowed

11.3.1.1 Support

Approximately 120 submissions expressed support for the proposed elimination of formulated grain-fruit products, including trade associations, State departments of education, food manufacturers, a policy advocacy organization, general advocacy organizations, school districts, health care associations, a nutrition professional, and individual commenters. Many commenters, including a State department of education, asserted that fortified grain-fruit products are often high in sugar and fat and that those products do not support the DGA recommendation to consume fruit as a separate and important food group.

11.3.1.2 Oppose

Approximately 115 submissions expressed opposition to the proposal that formulated grain-fruit products would not be allowed, including school districts, school food service staff, food manufacturers, other industry, and individual commenters. A school district and a school food service staff member argued that these products are needed in low-staff programs as they are readily available and easy to store. A school district claimed that these products are needed as they meet a need for “grab and go” breakfasts and breakfast in the classroom scenarios.

A school food service staff member and an individual commenter claimed that the availability of this option is important because:

- “It provides one or more nutrients that otherwise might be consumed in less than recommended amounts.
- It provides a convenient, cost effective option for school breakfast.
- It is easily tailored to breakfast in the classroom.
- It allows the food service directors options, within the required nutrient standards, to increase participation and gets children ready to learn.”

One school district requested an exception for grain-fruit products that are 100% whole grain, non-fortified and meet 35/10/35 (<35% total fat, <10% saturated fat, and <35% sugar by weight). A food manufacturer requested an exception for grain-fruit products that contain at least 20%, “100% fruit” by weight.

11.3.1.3 Other

Approximately seven submissions addressed formulated grain-fruit products, but did not explicitly express support or opposition for the proposal to prohibit them in reimbursable school lunches. A food manufacturer commented that it believes that grain fruit products that meet a minimum nutritional standard as it relates to 100% whole grain, less than 35 percent total fat, less than 10 percent saturated fat, and less than 35 percent sugar by weight, have a place in the school meal programs as an occasional menu item. An individual commenter stated that formulated fruit-grain products are no longer allowed to meet 1 grain and 1 fruit component at breakfast, since they are highly fortified and contain significant sugar and fat. An advocacy organization asked for clarification that this provision would not prohibit the use of fortified breakfast cereals or cereals with fruit, which may provide good sources of fiber, whole grains, and other important nutrients.

A trade association asked for clarification from the Agency on its decision to eliminate formulated grain-fruit products, claiming that by keeping them on the approved foods list, schools would be able to make the final decision about whether these products will be used. An industry association claimed that schools must have the flexibility to meet part of the weekly fruit requirement with a combination of dried fruit-

grain items, whole grain granola, fruit bars and yogurt bars. An academic commenter asked for clarification in the use of fruit desserts as a fruit option and whether cherry pie filling or other desserts such as apple crisp would qualify as their fruit options.

11.3.2 Other comments on fortification

Approximately six submissions addressed fortification issues other than those discussed above. A trade association and a food manufacturer stated that fortification is an effective means of helping children meet the DGA goals and urged the Agency to consider the benefits that the rational addition of vitamins and minerals can bring to school meals. Conversely, a State department of education noted that the proposed requirements only eliminate formulated grain-fruit products and do not address other highly fortified foods that are increasing in popularity and use. This commenter recommended that the Agency address significant fortification for all foods.

A food manufacturer that makes a product with a light pear juice concentrate that is lightly sweetened suggested that this fruit should continue to be viewed as “100% Fruit” and not fortified. A trade association noted that lean beef is nutrient rich and can reduce the reliance on highly fortified foods to provide children with the nutrients they require.

11.4 Meal requirements for preschoolers and infants

11.4.1 Support postponing revisions to the meal requirements for preschoolers and infants

No submissions expressed this view.

11.4.2 Oppose postponing revisions to the meal requirements for preschoolers and infants

A school district recommended including Pre-K grade levels in the proposed rule.

11.4.3 Other comments on meal requirements for preschoolers and infants

Approximately 120 submissions addressed meal requirements for preschoolers and infants, including a school district, a general advocacy organization, a State department of education, and food manufacturers. A school district stated that setting a calorie range for preschool programs of 400-533, instead of only a minimum level, is consistent with the proposed standards set for school-aged children and the DGAs aimed at adults and children over 2 years old. A State department of education claimed that the meal pattern for preschoolers and infants should be the same as the requirements for the Child and Adult Care Food program.

A food manufacturer claimed that the fruit and vegetable servings for Preschooler Group I are too large for a single eating session, as well as the grain/bread servings for Preschooler Group I and Group II. This commenter also advocated for appropriate grain based snacks for infants within this program. Further, this commenter expressed concern about the weekly calorie average for school lunches for children ages 3-4, claiming that the amount of calories (517) is about 5 percent of the recommended daily caloric intake for many children in this age group.

An advocacy organization recommended the following language for Section 208: “Apply nutrition standards to foods served to in-school preschools that comply with Child and Adult Care Food program versus NSLP guidelines.”

11.5 Technical amendments to Appendices A and B to 7 CFR 210 and 220

No submissions addressed this issue.

11.6 Implementation date

11.6.1 Support proposed implementation date (SY -2012-2013)

Approximately 60 submissions supported the proposed implementation date. Commenters generally urged the USDA to quickly issue the final rule to allow schools to prepare for implementation of the rule

for SY 2012-2013. A trade association, a professional association, a general advocacy group, and other commenters expressed support for the proposed implementation date because updating school meals to align with the DGAs are long overdue. Some commenters, including advocacy organizations, supported the proposed implementation date stating that current meal standards are not consistent with dietary guidance for increasing fruits, vegetables, whole grains, and for reducing sodium and trans fat. An advocacy organization recommended that USDA move forward in accordance with the timeline proposed in order to improve the nutritional quality of school meals. A policy advocacy organization urged the Agency to implement this proposed regulation within the proposed timeline to ensure children have greater access to nutritious meals and so school food service staff can benefit from the training and technical assistance needed to implement the changes.

Commenters also stated that schools have had ample notice and encouragement to implement the principles of the DGAs and should be able to meet the proposed implementation schedule. A general advocacy group stated that while full implementation of updated nutritional standards will take resources and time, the proposed timeline should allow ample time for adequate training, and implementation of the proposed changes. A general advocacy group stated that the proposed implementation timeline is realistic because many schools have already begun the process of improving the quality of their menus.

11.6.2 Oppose proposed implementation date and/or suggest a different date

Approximately 835 submissions opposed the proposed implementation date or suggested a different date. Numerous commenters suggested a different implementation date. Many requested that mandatory implementation of the rule be delayed until SY 2013-2014. Other commenters recommended delaying the mandatory implementation of the rule until funding is available and at least until SY 2013-2014 or beyond. A school food service staff member recommended that the new rule be delayed until - in order to ensure adequate time to train staff, help students adapt to the new meals and allow schools in regions with limited supplies of whole grain products to secure new supplies. A child nutrition consulting firm argued that in order to allow for well-founded and reliable field testing which may result in further revisions to the proposed NSLP/SBP requirements, the implementation date for the proposed rule should be delayed until SY 2013-2014. Similarly, a school food service staff member recommended implementation begin with SY 2014-2015 to allow time to address all areas of concern to ensure that changes made will be sustainable and will not reduce student participation. A school food service consulting firm stated that USDA could better achieve the goals of the proposed rule by allowing for an extended and flexible implementation schedule. This commenter argued that USDA should give schools the option to achieve full compliance at any point up to the 2014-2015 school year.

A professional association and a school district stated that the whole grains timetable is overly ambitious. These commenters argued that the lack of actual guidance in the proposed rule and the significant impact these changes would have on schools meeting any new guidance justifies a delay of implementation. These commenters recommended that the implementation of the whole grain requirement be delayed until SY 2013-2014.

Numerous commenters opposed the implementation date. Commenters requested that implementation of the revised breakfast meal pattern requirements be delayed until additional funding is available to help offset costs. A school food service staff member stated that it is unrealistic for USDA to expect schools to be compliant to the rule changes by the 2012-2013 school-year. Another school food service staff member stated that districts needed more time to implement the proposed regulation in order to conduct staff training, re-work their bid process, allow time for manufacturers to develop products that fall within in nutritional standards, and to purchase new equipment to allow for more space for increase in fresh items. A school district and a school food service staff member encouraged USDA to reconsider the timeline because the rule imposes “an unreasonable timeline due to the complexity of the program, supply chain issues, procurement and bidding process, menu and recipe changes, staff retraining, equipment and storage needs, and commodity purchases.” An individual commenter agreed, stating that the agency

should delay implementation of these new regulations until a time when states are more able to meet what it refers to as the significant costs that these unfunded mandates impose. A school district and a school food service staff member argued that the implementation plan for the entire process was too quick, and expressed concerns that there would be insufficient time for training, interpretation of USDA guidance, State Agency planning and manufacturer re-tooling.

A school food service staff member and a school district commented that the final guidelines are scheduled to come out in January 2012 and be implemented by July 1, 2012 and expressed concern that this was not enough time because most schools send out their food bids from February through April for the following school year. A school district stated that their commodity orders are usually due in late January and was concerned that USDA would not have final rule in place in time. A trade association agreed, arguing that there is a conflict between the commodity ordering cycle and publication of the final rule, and requested that the rule be delayed until SY 2013-2014.

A food manufacturer stated that providing a less restrictive phase-in or even delayed implementation date would provide the needed time for all segments of food manufacturing to be aware of the final ruling in order to develop materials and products. A food manufacturer and a school district asserted that decisions about new and reformulated products for the 2012 school year must be made in spring of 2011, before the final rule is published. This commenter argued that a "wrong guess" about what the final rule will require would have significant cost implications for all stakeholders. This commenter recommended that the Agency revise the implementation schedule to ensure sufficient time for schools and manufacturers to plan and prepare.

Several commenters argued that there was substantial more lead time in implementing the updated WIC food package. These commenters stated that the WIC food package was less complicated than the proposed rule and encouraged FNS to implement a similar implementation schedule. These commenters requested that the mandated implementation date of the proposed rule be extended until SY -2013-2014. A school district expressed concern about its ability to meet the requirements of the proposed rule given the significant changes that would have to be made to school menus. A school district and a food service software company argued that sufficient lead time is needed for training and documentation materials to be provided and for software vendors to implement updates that may be a consequence of changes in school meal patterns. A food manufacturer argued that USDA should consider a delayed timeline for the NSLP/SBP meal pattern and nutrition standard changes until the time at which the Competitive Foods Rule would also be released as an interim rule.

11.6.3 Suggest phase-in/gradual implementation

Approximately 400 submissions suggested a phased-in or gradual implementation schedule. A food service industry company requested that a phase-in plan be developed in order to slowly incorporate aspects of the new rule. A school district argued that a more gradual implementation schedule would allow students to become accustomed to the changes in the meal plans and the changes would therefore be better received. A school district and an individual commenter agreed, recommending that the changes in meal patterns should be phased-in beginning with elementary schools, since younger students have not yet developed food preferences that may lead to rejection of the revised meal pattern. A school district stated that when implementing new foods such as whole grains, they have found greater success in doing it gradually.

A food service industry company stated that schools and food service providers would need a significant phase-in period to purchase or finance, and then install, all the new equipment; hire the additional managers and workers; re-train existing workers; and develop a new way of preparing and providing breakfasts and lunches from scratch. This commenter also argued that phasing-in the proposed rule would reduce the risk that significant numbers of SFAs may drop the school breakfast or lunch programs. A school district argued that phasing-in the new requirements would give the USDA time to create new recipes and upgrade the commodity program.

Two school districts suggested phasing in the new fruit and vegetable requirement because of concerns about product availability and costs. A food service industry company wanted to see a phase-in plan for the increased fruit and vegetable portions in order to promote greater acceptability, and allow time to assess student response to additional fruits and vegetables.

A school and school service staff member recommended implementing pilot programs to study the effects of proposed rule changes before implementation. Commenters recommended that one year of pilot programs be conducted with different size school districts from different regions of the country in order to test the feasibility of the new proposed changes to the meal regulations. A law firm argued that conducting pilot programs to test the revised meal pattern at schools willing to volunteer to implement the meal pattern would ensure the revised rules would not cause serious damage to school feeding programs and the children they serve.

A professional association suggested a phase-in of the requirements so that schools that could comply most readily do so early, and those for which compliance may be more difficult would have additional time. A school food service consulting firm agreed, stating that they wanted to see a phased-in approach which would allow SFAs most able to comply to implement the changes first. This commenter added that food and labor costs would be reduced under a phase-in approach. This commenter also argued that flexible implementation would permit food manufacturers, suppliers and distributors adequate time to reformulate food products. This commenter concluded that an extended and flexible implementation plan would allow SFAs to avoid wasting money by reducing costly rebidding of their contracts with Food Service Management Companies (FSMCs). School districts argued that schools should be allowed a phased-in implementation schedule based on the size of the LEA, because it would allow the smaller LEAs with less purchasing power more time to adapt.

11.6.4 Suggest implementation of the NSLP only

Approximately 105 submissions suggested implementation of the changes to the NSLP only. Commenters suggested that USDA delay implementation of the revised breakfast meal pattern requirements until additional funding is available to offset costs. Several commenters, including a school advocacy organization, a trade association, and a school district, argued that there should be no specified implementation timeline for the regulatory changes in the SBP until funding can be identified to implement the program. A State WIC program agreed, requesting that the nutrition standard changes for breakfast be implemented after the NSLP nutrition standards. This commenter requested that FNS delay the implementation of the breakfast requirements until a breakfast pilot can be conducted to test cost control measures and student satisfaction. A State department of health stated that many stakeholders have advocated against implementing the new guidelines for breakfast until additional sources of funding can be acquired, but they recommended that there be no delay in the implementation of the breakfast guidelines because the increased portion requirements would improve the nutrient intake of the child.

11.6.5 Other comments on proposed implementation date (implementation issues)

Approximately 430 submissions addressed the proposed implementation date, but did not explicitly express support, opposition, or the other issues addressed above. One school district stated that while the intent of the proposed rule is good, the timing and resources to implement the new rules are scarce and it is concerned that implementation of the rule in the same format and timeline as proposed could have unintended consequences for the school meal programs in that district. Some commenters stated that SFAs traditionally order and sample products well in advance of a new school year. These commenters added that sufficient lead time for product development, testing, menu development, sampling, and procurement changes need to be provided so that SFAs can make the adjustments necessary to ensure program compliance, student acceptance and continued participation in school meal programs.

A school district and an individual commenter stated that the proposed rule would affect the CN Commodities Program, as it restricts the use of starchy vegetables and several items available through the

program are problematic for the proposed sodium restrictions. These commenters argued that the implementation schedule for the new regulation should allow time for everyone to meet the new regulations. A law firm urged USDA to provide sufficient lead time for the modification of commodity foods required to meet revised standards. A school food service staff member recommended that USDA provide clear guidance regarding the use of remaining commodity foods as the new meal standards are implemented due to commodity orders having already been submitted for the upcoming school year. A State department of education commented that USDA needs to give the food/dairy industry enough time to reformulate or create new products to meet these proposed requirements. An advocacy organization urged USDA to work with State Agencies to ensure the nutritionally improved products are available to all SFAs and to help schools align procurement schedules with implementation of the proposed rule.

A trade association argued that timing for implementation of a final rule needs to factor in school and school foodservice suppliers' schedules and methods of doing business. A food service industry company stated that the implementation schedule of the proposed rule would undermine the multiple-year contracts negotiated between food service companies and SFAs. This commenter suggested that if USDA chooses to proceed with the proposed rule without delaying its effect on SFAs that have contracted with FSMCs, provisions should be made in the rule to enable these contracts to continue for their original terms including renewal periods.

A few commenters urged USDA to incentivize early implementation by providing the additional 6 cents reimbursement to schools who meet the new meal pattern prior to SY 2013-2014. A State department of public instruction and other commenters urged FNS to consider waiting to make these changes at a time when Federal funding will be available for the districts to implement them.

A nutrient analysis software company stated that the proposed rule discusses updating the USDA menu planning resources including the requirements for nutrient analysis software. This commenter argued that because of individual software release schedules, the timing for receiving these new requirements would impact all software vendors in the delivery of their modified programs. Commenters argued that sufficient lead time needs to be provided so that software vendors providing meal pattern, nutrient analysis, and other related products can develop and implement any updates that may be required by or may be a consequence of changes in school meal patterns.

A food manufacturer and a child nutrition industry consultant expressed concern that the proposed implementation timeline was not synchronized with the scheduled proposed rule and implementation for the upcoming competitive foods rule. These commenters recommended that USDA consider a delayed timeline for the proposed rule until the Competitive Foods Rule would also be released as an interim rule.

A child nutrition industry consultant argued that a waiver should be considered and offered to schools that cannot meet the implementation timelines. A school food service staff member argued that school districts that already meet or exceed the current guidelines should be allowed a waiver to allow a more reasonable amount of time to meet these new standards. A food service industry company argued that a waiver should be offered to SFAs that are successfully using nutrient standard menu planning. This commenter stated that this waiver should include specific targets that must be met for dietary fiber, sodium and vegetable subgroups. If a waiver is not acceptable, this commenter recommended that nutrient standard menu planning schools should be allowed delayed implementation. An advocacy organization recommended that the implementation of new school meal nutrition standards be timed so as to coincide with the opening of the school year not during it.

11.7 Other comments on miscellaneous proposed changes

No submissions addressed this issue.

12. USDA implementation technical assistance

Approximately 76,235 submissions addressed USDA's implementation technical assistance, including school districts, advocacy organizations, trade associations, school food service staff, schools, community organizations, food banks, food manufacturers, State departments of education, a State department of public instruction, a State WIC program, a State department of agriculture, local governments, school advocacy organizations, nutrition professionals, other industry, and individual commenters. Numerous commenters stressed the importance of implementing a nutrition education program to help children learn to make healthy food-choice decisions. One commenter recommended three ways to target nutrition learning activities: innovative learning materials, hands-on and interactive approach, and collaboration between USDA and other Federal agencies.

Many commenters stressed the importance of training for the integrity of the programs. A school district added the development of training materials should be started now. This commenter recommended that the Agency develop specific topics and minimum hours of training to be provided by the state for LEAs/SFAs. Two policy advocacy organizations also encouraged the Agency to develop guidelines and training for LEAs on the purchase of local meat/meat alternate products and locally grown products. Two advocacy organizations suggested that USDA provide training and technical assistance to help schools substitute lean and extra lean meats and non-meat alternatives for higher fat and sodium options, including lists of meat products that should be limited, sample recipes, and sample menus.

Many commenters requested that the Agency provide technical assistance prior to finalizing the rule to help successful implementation of the proposed rule. An advocacy organization and a food bank urged the Agency to provide the extensive support and equipment needed to help food service operators to adapt to the proposed requirements. An individual commenter suggested that the Agency develop a guidebook on possible cost-saving strategies that governments can look to for ideas or guidance. Some commenters claimed that it is important to effectively market school lunches as the healthy, affordable choice for school-age children.

Several commenters claimed that USDA's recipes should be modified immediately to provide effective technical assistance prior to finalizing the rule. Similarly, commenters suggested that the Agency update the food buying guide so that it reflects the new nutrition standards for fruit and vegetable requirements. A school district recommended that USDA develop a reference table that suggests herbs/spices for use with fresh cooked produce for school nutrition staff.

A school district requested that the Agency provide data on the sites that have successfully implemented HUSSC, to include participation changes, food and labor costs, and staff training costs. An advocacy organization and an individual commenter suggested that the Agency provide new guidance to school food services indicating that fruit and vegetable items may be taken out of the food service eating area. Commenters requested clear guidance on best practices for the processing of USDA commodities in order to align these products more closely with the 2005 DGAs. Some commenters urged USDA to provide guidance on the 6 cent reimbursement rate increase quickly, as many LEAs are struggling with increased costs and other barriers to implantation of the proposed NSLP/SBP changes.

13. Regulatory Impact Analysis (6 analysis)

13.1 Agree with cost/benefit analysis

No submissions expressed this view.

13.2 Disagree with cost/benefit analysis

Approximately 30 submissions expressed disagreement with the cost/benefit analysis. A non-profit organization, school districts, and other individual commenters asserted that FNS's estimate of the fiscal impact of the rule was too low. These commenters expressed concern that schools and school districts would not have the capacity to cover costs associated with the proposed meal patterns. An individual commenter questioned if the rule would really have the benefits anticipated and expressed concern that

the costs would therefore outweigh the benefits. A food bank commented the Regulatory Impact Analysis (RIA) stated that contributions from state and local governments may need to increase to cover the costs of the new school meals. This commenter concluded that it seems unlikely that any additional state and local funds would be available.

A school advocacy group argued that the Office of Budget and Management (OMB) should conduct a new cost/benefit analysis that incorporates the financial and operational impact on school districts, including the impact on resources available for instructional programs, services and the workforce. This commenter stated that the cost/benefit analysis ignores the impact of the "\$6.8 billion price tag on school districts" and to ignore the cost to educational systems is not an accurate reflection of the true cost of the measure. A school food service staff member commented that food prices have risen to historic levels and that these new food costs were not factored into the USDA calculations. A non-profit organization commented that FNS estimated significant cost savings to school districts transitioning to lower fat milks. This commenter argued that school districts have already transitioned to 1% and fat-free milk and would not benefit from these estimated cost savings.

13.3 Rule is too costly

Approximately 3,165 submissions stated that the rule was too costly. Numerous commenters requested that the costs associated with the rule be reduced so that school districts could still effectively provide nutritious meals to their students. A school district stated that the new school meals would cost more, and that these costs would magnify over time with rising food and supply costs. A professional association argued that the costs estimated by FNS do not take into consideration implementation costs due to training and equipment and that these expenses would be too costly for most school districts to implement along with the increase in food costs.

Many commenters stated that expecting state and local funding to cover the outstanding costs is unrealistic. A school food service consulting firm commented that many schools are already making substantial budget cuts and would not be able to absorb the increased expense the regulation would create. This commenter asserted that "the unprecedented budgetary crisis facing the Nation's public schools must be taken into account in determining the best and most effective implementation plan for the Proposed Rule." A State department of public instruction, a food service industry company, and other commenters recommend that FNS retain current meal patterns until funding to cover expected increased costs are provided.

Commenters argued that, since the increased costs for breakfast were so high and there is no increased reimbursement for breakfast, school districts might discontinue their breakfast programs unless additional funding was granted. A school food service staff member stated that increasing paid meal prices would not provide enough additional income to fund the increased food cost. A non-profit organization expressed concern that the increased costs would push schools to privatize their school meal programs.

School districts, a policy advocacy group, and other commenters stated that the 6 cent per day increase in funding falls short of the actual cost increase of the regulation. A school advocacy organization and a professional association suggested that FNS revise and align meal patterns and standards in the proposed rule to cost no more than the 6 cent Federal reimbursement increase available. A Federally elected official stated that they have heard from many school board members who are concerned that their schools would not be able to afford the improved nutritional standards. School districts and other commenters argued that the 6 cent increase in the reimbursement rate would provide partial relief to the revenue issues but that the approximate 7 cent increase that would result from the limits on starchy vegetables would more than negate that increase.

Commenters also argued that this regulation was an "unfunded/underfunded mandate" and could have many unforeseen consequences to the school lunch program. Commenters asserted that the proposed rule acknowledges that it is an unfunded mandate but that FNS justifies its promulgation as being the least

costly way forward given the statutory mandate to issue new menu planning regulations. These commenters stated that this justification does not help districts who must bear the burden of the estimated \$7.5 billion shortfall. A professional association expressed concern by the financial impact the law could have on school districts in a “time when many continue to struggle with the impacts of the economic recession.”

Commenters stated that the estimated cost of compliance of \$6.8 billion over the next 5 years might be difficult for smaller or less well-funded school districts to meet. A school nutrition consultant, food manufacturers, and a school district were specifically concerned that there was an estimated increase in costs for school meals of \$6.8 billion dollars between 2012 and 2016, and an additional \$1 billion a year thereafter, totaling almost \$11 billion dollars through 2020. These commenters stated that the additional 6 cents would only generate approximately \$3.5 billion in that same time leaving \$7.5 billion unfunded. Several commenters, including school districts, a food service industry company, and a school advocacy organization, discussed what they had calculated as the increased cost to their lunch and breakfast programs.

Commenters recommended different increased reimbursement rates for lunch and breakfast. One commenter suggested the lunch reimbursement rate should be 18.5 cents. Other commenters recommended an increase of the reimbursement rate to 50 cents.

An advocacy organization expressed concern that schools would not get the 6 cent reimbursement for 4-6 weeks after the program started and expressed concern about food service programs being able to bear these expenses at the start of the school year. A food manufacture argued that if the sodium targets are unattainable school districts would not be eligible to receive the additional 6 cent reimbursement rate increase. A school district stated that districts should be pre-certified to receive the incentive pay prior to the implementation of the rule so that they would not need to absorb the costs upfront.

An advocacy organization argued that efforts such as the HUSSC and the Alliance for a Healthier Generation Healthy Schools Program have resulted in schools improving the quality of school meals at current reimbursement rates and that many schools have made changes that are consistent with the provisions in USDA's proposed rule with little or no additional funding. This commenter listed provisions in the Healthy Hunger-Free Kids Act that were designed to reduce financial barriers to providing high quality lunches.

13.4 Comments on benefits

13.4.1 Nutritional and health benefits

Approximately 90 submissions discussed the nutritional and health benefits of the rule. Commenters argued that there is no guarantee that the benefits stated in the regulation would be realized. A school district, a school nutrition consultant, a food manufacturer and an individual commenter gave examples where they felt this to be the case. These commenters argued that:

- The following assumption given in the proposed rule has not been tested: The proposed rule “provides a clear means of meeting the statutory requirements through a food-based meal pattern designed with the particular circumstances and challenges of school food service in mind, to ensure that it is feasible for school foodservice operators and does not jeopardize student and school participation in the meal programs.”
- The National Health and Nutrition Examination Survey (NHANES) data from - that was cited in the proposed rule that was used to demonstrate that the typical diets of school aged children fell short of the DGA/MyPyramid goals did not differentiate between school meals and other food intake, nor compare dietary intakes for children who participate in the program and those who do not. The commenters also asserted that other research indicates children participating in school meal programs consume more food on the DGA/MyPyramid than non-participants.

- The proposed rule stated that “[a]s the rule is projected to make substantial improvements in meals served to more than half of all school-aged children on an average school day, we judge that the likelihood is reasonable that the benefits of the rule exceed the costs, and that the proposal thus represents a cost-effective means of conforming NSLP and SBP regulations to the statutory requirements for school meals.” Commenters argued that while this might be true in a macro sense, that the majority of costs would be borne by schools and families who may be least able to afford them.

A school district argued that reduction in health care costs by implementing the rule should be used to offset by the costs to the school districts of implementing the rule. Another commenter asserted that, over time, the costs associated with childhood obesity will increase and likely outpace the costs associated with the proposed rule.

13.4.2 Other comments on benefits

Approximately five submissions addressed other benefits relating to the proposed rule. An individual commenter and a school food service staff member expressed concern with the fact that FNS noted that FSMCs may find new opportunities to work with SFAs that currently do not contract for food service assistance, as a benefit within the regulation. A school food service staff member urged FNS to refrain from making an endorsement for retaining FSMCs and to take into consideration that these companies are needed in some school districts. This commenter added that it is not the only way for a SFA to have a stable Child Nutrition Program. This issue is also discussed in Section 14.4 below.

13.5 Comments on costs

13.5.1 Food cost

Approximately 3,030 submissions discussed food costs associated with the rule. Many commenters expressed concern about the increase in foods costs if the regulation was implemented. A professional association commented that many of the foods that meet the requirements in the proposed rule are more expensive than the food served in the school programs today and come with higher labor costs, meaning that the food cost component of preparing and serving school meals would increase. Commenters noted that FNS stated that these changes would impact food costs an additional 7.2 cents at lunch and 25.3 cents at breakfast. Commenters argued that the impact would be far greater than FNS stated. Several school districts, a school food service consulting firm, and other commenter types stated what they had calculated as the increased costs from food to school lunch and breakfast programs. Commenters argued that the 6 cent reimbursement increase per lunch would not cover the cost of implementation for either breakfast or lunch. A school food service staff member requested a reimbursement rate of \$0.10-15 cents per meal for the increase of breakfast portion size. A school food service staff member requested that FNS increase the reimbursement rate to \$0.25 per meal. Commenters argued that at the high school level, food costs would double due to the additional protein, fruit and grain components.

A school district argued that the proposed meal pattern requirements for vegetable and grain servings would increase costs unless the selection of vegetables and grains available from commodities more closely mirror those same guidelines. A school argued that in order to meet the sodium requirements they would need to cook from scratch. This commenter concluded that scratch cooking is not an affordable way to produce school meals and expressed concern that this would be the only way to provide foods which could fall into the lower sodium requirement. A school food service staff member was specifically concerned about the impact of implementing the requirements for all grains to be whole-grain rich within two years and the requirement of at least one meat/meat alternate to be offered at breakfast. This commenter argued that the proposed regulations would adversely affect the schools' ability to serve nutritious, low-cost meals to students by drastically increasing costs. Other commenters argued that the reduction in sodium would cause the purchased items to be more expensive. A food service industry company argued that in order for manufacturers to meet the new regulations they would have to look at

the entire picture for all the requirements for whole grain, fat, calories, sodium, as well as the serving amounts per meal and concluded that this would raise everyone's cost.

An industry association argued that the proposed rule's projected reduction in milk costs may not be a safe assumption given the requirement that flavored milk must be fat-free. This commenter stated that to maintain palatability and taste appeal, it is possible that processors would spend more on other ingredients and potentially increase total costs. A food manufacturer expressed concern the proposed changes to the tomato paste crediting could lead to significant financial impacts on the entire tomato industry.

Commenters were also concerned about the additional expense of whole grain products. A State school nutrition association commented that the cost for whole grain bread and rolls can be in excess of 20 percent more than the same products without whole grain. Another commenter stated that a 51 percent whole grain roll would cost their school 13 cents more per roll and requested that the reimbursement rates reflect the increased cost of providing an improved meal pattern. An individual commenter stated that the cost of whole grain and low sodium products was underestimated in the proposed rule, especially in the near term. A school district expressed concern that as more fruit and vegetables are purchased for the school breakfast and lunch programs that the general fruit and vegetable costs would rise and supply would decrease.

A labor union expressed concern that if food costs become too great, districts could be forced to cut breakfast programs or outsource their food service operations to contractors who promise to cut labor costs by lowering wage and benefit standards. A school district argued that if a protein is going to be required for breakfast as well as more fruits, the reimbursement for breakfast should be increased to a value closer to the reimbursement for lunch. A school district, a school food service consulting firm, and an individual commenter expressed concern that the increase in fruit servings for breakfast would be a significant cost. A school food service consulting firm suggested that USDA consider providing an allocation of USDA donated commodities in support of the SBP as part of the next Farm Bill. A school district and an industry association commented that the increase in costs for breakfast would be "approximately 50 cents by 2015 with no additional resources to offset these costs." These commenters and school food service staff also expressed concern that SFAs might be forced to abandon breakfast programs given this increase in costs.

Some commenters expressed concern that there would be an increase of food waste and therefore food costs due to food items that are not being consumed. A State department of education agreed, arguing that the expense of offering larger portions of fruit, combined with the possible high rates of waste, may even discourage schools from offering a breakfast program.

A food service industry company, a food manufacturer, and a school district expressed concern about price fluctuations, variety, and product availability during the winter months. A food manufacturer argued that the increased requirements for food would impact the amount of product delivered at any one time and could substantially change their company's operational cost structure. An academic commenter stated that SFAs may be required to pay increased delivery charges due to more deliveries required to meet the increased food requirements thus further increasing the cost of food. An individual commenter stated that rising fuel prices mean even higher costs for shipped produce and other food. A professional association commented that food price increases, which exceed the cost projections in the proposed rule, are of great concern as schools attempt to implement these proposed meal pattern revisions. This commenter added that the price increases are also likely to reduce the volume of USDA commodities received by schools, further complicating the management of school meal programs. A school district stated that the cost increase for the meat/meat alternate at breakfast would be significant and expressed concern that there would be no additional reimbursement provided.

A food manufacturer argued that any increased cost incurred by the schools has a trickledown effect impacting the manufacturers and concluded that funds available to spend on the improvement of foods that would be consumed are crucial versus adding food requirements to student meals that would go into

the trash cans. A school food service staff member commented that the proposed regulations could have an adverse effect on the industry partners who provide products for the school nutrition programs. This commenter asserted that the cost of production plant re-tooling and product reformulation may compel many in the child nutrition food industry to withdraw from the market, thus limiting the number of manufacturers and distributors who serve school programs. A food manufacturer expressed concern that they would see an increase in raw material costs because of the regulation and stated that these costs would in turn be passed to the SFAs. A school district argued that LEAs should not be required to increase meal costs to full price paying students to supplant unfunded mandates and concluded that a better solution would be to allow school districts to manage their own budgets and increase meal prices as deemed necessary. An academic commenter asserted that SFAs may offer fewer condiments as a cost savings measure, which would affect the quality and acceptability of foods served.

Some commenters also discussed ways that schools can reduce the cost of purchasing food. An individual commenter stated that buying food locally can be less expensive. Two individual commenters argued that buying in season fruits and vegetables would reduce the cost strain on the government's budget. An individual commenter stated that it is more economical for schools to buy frozen vegetables in bulk rather than fresh vegetables. A trade association stated that canned foods maximize cash-value benefit and are often less expensive than their fresh counterparts and can offer a lower per unit cost alternative than fresh food. A food manufacturer commented that "maintaining the role of potatoes" in school meal programs would help alleviate some of the costs of the proposed changes, making implementation of the proposed rule more economically feasible. School districts and other commenters argued that the 6 cent reimbursement rate increase would provide partial relief to the revenue issues, but that the approximate 7 cent increase that would result from the limits on starchy vegetables would more than negate that increase.

13.5.2 Labor cost

Approximately 370 submissions discussed labor costs associated with the rule. Generally, commenters expressed concerns that the proposed revisions to the NSLP/SBP requirement would increase labor costs to schools. A school district and a school food service staff member commented that labor cost are expected to increase due to the need of more skilled labor and training, and expressed concern that the contribution to the meal cost from USDA would not change. A nutrition professional argued that FNS's projections for increased costs in food, equipment, and labor are not accurate and too low. A school district asserted that they would need to add more staff, including pay and benefits, in order to comply with the proposed regulation.

An individual commenter asserted that FNS underestimated costs associated with training State Agencies how to work with local food professionals. Other commenters agreed, stating that schools would require an increase in funding for training staff to meet skills needed in purchasing, cooking and serving methods. Commenters expressed concern that there was no funding in place for staff training even though they would be required to train staff. A school district requested that FNS provide a minimum of \$.01 per reimbursable meal served to the LEA for staff training at district level. A school food service consulting firm argued that training costs to enable current staff to shift from a heat-and-serve to a full-cook production environment could add significant costs over and above any actual food cost savings that could be realized. This commenter requested that FNS conduct a broader study to determine the cost for appropriate space, equipment, and staff training, and assess the implications for food safety, food consistency and student acceptance. This commenter asserted that this evaluation should enable USDA to issue appropriate guidance to support this shift in food production practice, and that USDA should conduct this study prior to imposing substantial additional costs. Another consulting firm argued that the current labor pool in most schools is largely unskilled in food preparation techniques and the cost of training them to properly handle and prepare raw ingredients is prohibitive given the turnover that many districts experience.

A dietician, a food service industry company, and a school district argued that if schools have to return to onsite preparation (versus purchasing processed convenience items), labor costs are likely to increase. Two school districts agreed, arguing that in order to meet the sodium requirements they would need to cook from scratch which would require additional personnel. These commenters expressed concern that not all school districts would be able to hire more food service staff. A school district expressed concern that cooking from scratch would require them to hire cooks for each site that are paid \$1.20 an hour more than the leads currently are paid and \$2.14 an hour more than our entry level employees. This commenter concluded that cooking from scratch would therefore not be feasible for their district.

A professional association argued that increased costs to schools from the proposed rule are driven by increases in both food and labor costs (labor (44.5 percent) and food (45.6 percent)). A school food service staff member argued that the additional 6 cents reimbursement would not cover the estimated increases for food and labor cost which equates to approximately 14 cents for each reimbursable lunch and 50 cents for each breakfast.

A labor union argued that a stable, well-trained workforce is essential to meeting the USDA's goal of improving school nutrition and that providing decent wage and benefit standards would help promote the quality of the school meal program. This commenter expressed concern that schools would turn to contractors in order to reduce labor costs and argued that some contractors have sought to reduce worker wages and benefits as a way to cut costs.

13.5.3 Cafeteria equipment/infrastructure cost

Approximately 410 submissions discussed cafeteria equipment and infrastructure costs. Generally, many commenters argued that the proposed regulation would require them to increase their cafeteria equipment/infrastructure. A school service staff member argued that they would need to purchase extra cups, more sturdy disposable plates, and more garbage liners because food would be discarded if the students must take a fruit or vegetable with the meal. This commenter also argued that garbage dumpsters would be needed because of the increase in food waste. Other commenters noted that the serving trays would need to be sturdier and/or larger in order to support the additional food and argued that these would be more expensive. A school district and a food service staff member stated the cost of equipment including scoops, containers, pans, etc. would increase. A school service staff member, an advocacy organization, and a professional association commented that meeting the new requirements would require schools to secure additional coolers, freezers and dry storage spaces; upgrade small-wares and sinks required to wash and process the additional fresh produce; modify and replace serving lines to accommodate larger portions; and train staff on storage, preparation and service of new menu items. These commenters concluded that these equipment costs would be too expensive for most schools to purchase, and recommended that the implementation of the revised breakfast meal pattern requirements be delayed until additional funding is available to help offset costs.

A State department of education argued that the current system for many of their schools with a central kitchen was designed to accommodate the current meal pattern, components, and quantities, and that the meal pattern changes would require significant system changes to implement. A school district and a food service staff member argued that the additional fruit and vegetable component requirements would necessitate additional refrigeration capacity per school location and requested that FNS restore equipment funding for SFAs as an essential element of school meals programming. Another school district commented that there is an implied need to upgrade kitchen equipment in order to properly prepare and serve the fresh meal items that the proposed meal patterns require, and asserted that equipment upgrades add an additional financial burden not offset with appropriate funding. Another school district agreed, arguing that scratch cooking would increase capital expenditures, as new equipment and additional preparation space would be required. A nutrition professional expressed concern that the RIA did not include additional equipment costs. This commenter gave examples of equipment she thought schools would need to purchase in order to comply with the regulation.

One school district outlined the amount money it would need to upgrade their kitchen in order to cook from scratch and conclude they would close to \$3 million. A food service industry company calculated that the cost for a full renovation of a typical high school's kitchen and food preparation areas would be from \$350,000 to \$500,000, while the cost to modify an existing facility would likely be \$60,000 for a typical high school. One school district calculated that it would cost them \$4,000 per serving site to upgrade their kitchen's equipment to meet the proposed food criteria. This commenter added that modifying or replacing serving lines is very expensive, but would be necessary in order to ensure hot foods stay hot and cold foods stay cold.

A school district and a school nutrition consultant commented that the recent round of equipment grants for school food service demonstrated that there is a great need for facilities improvements in schools. These commenters asserted that scratch cooking is no longer a feasible method of preparing food in schools, and that menu planning requirements need to reflect this reality and allow for the broad use of prepared items. Other commenters argued that the regulations would become operationally and economically viable if schools could prepare meals on-site and stated that USDA should offer financing to schools that wish to do so. A school district noted that many elementary schools in their school district were built without kitchens and dining rooms on site. This commenter added that their school district also currently lacks funding to cover the increased facility cost necessary to warehouse the increased food requirements. Another school district agreed, arguing that many schools do not have adequate storage and preparation and serving line capacity.

An individual commenter stated that USDA assumed that much of the demand for new food service equipment during the American Recovery & Reinvestment Act (ARRA) grants was the result of routine replacement of old equipment. This commenter disagreed with this assumption and stated that new equipment would be required to prepare meals using the proposed standards. A professional association also disagreed with FNS's conclusion that the school equipment grants available through ARRA addressed much of the most pressing equipment needs and the subsequent decision to not include additional incremental equipment costs as a result of the proposed rule. A trade association also noted the need for schools to purchase new equipment, and added that securing additional resources for school cafeteria equipment can free up money so schools can purchase better quality food for students to meet the new meal standards. A professional association argued that many school kitchens would require extensive investments in new equipment (from cutting boards and knives to ovens, sinks, storage space, coolers and freezers) as they change from a "heat-and-hold" model to one which requires more extensive food preparation and different serving models.

An industry association stated that schools may need assistance to replace deep fat fryers with steamers, microwave ovens, and combination ovens, as well as add items such as fruit and vegetable preparation sinks, refrigeration units, and utensils to prepare ready-to-eat portions of fruits and vegetables. This commenter and others urged FNS to engage with other agencies, organizations, and Congress to secure additional equipment funding to help schools meet the new meal pattern requirements.

13.5.4 Baseline cost estimate

No submissions addressed this issue.

13.5.5 Assumptions used for cost estimate

Approximately 45 submissions discussed the assumptions used for cost estimates in the cost-benefit analysis. A school food service staff member commented that the estimated increases for lunch and breakfast are "drastically low." An individual commenter argued that many districts have only served low fat and fat free milk for many years and, therefore, the assumption that the cost of serving milk would be reduced is not valid. A school advocacy group argued that USDA may have underestimated the financial burden to school districts of the proposed rule by not addressing the 9.9 percent of program costs beyond food and labor, such as increased supply, equipment, storage, capital expenditures, logistics, and

procurement costs. A school food service staff member stated that harsh winter conditions, world events, and commodity shortages have driven food prices up and that these new food costs were not factored into the USDA calculations. Another school food service staff member argued that because the proposed rules have not been piloted, it is impossible to calculate the true financial impact that they would have on a school food authority.

A nutrition professional argued that the cost analysis was incorrect in assuming that schools that have implemented the HUSSC have demonstrated an ability to serve meals in close proximity to the new meal patterns while operating cost-effective school meal programs. This commenter asserted that HUSSC schools are not required to offer the same quantity of fruits and vegetables or need to meet the same sodium and trans fat requirements found within the proposed regulation.

A company argued that FNS's financial impact studies are not valid or realistic and expressed concern that the financial viability of both the breakfast and lunch programs would be compromised by the proposed changes. A school food service staff member, a school, a school district and other commenters argued that the USDA's cost analysis within the proposed rule is based on IOM data from - and is therefore outdated. These commenters concluded that schools would therefore not have the capacity to recover costs associated with proposed meal pattern.

13.5.6 Administrative impact on SFAs, State Agencies, USDA

Approximately 70 comments discussed the proposed rule's administrative impacts on SFAs, SAs and USDA. A school advocacy group argued that the increase in monitoring activities would put additional strain on school and district level staff and potentially discourage school districts from adopting the voluntary meal patterns and standards. A State department of education and an individual commenter argued that FNS's claim that the proposed rule would not increase the existing burden on local schools participating in NSLP is untrue and gave examples where documentation requirements for schools would increase under the proposed rule. Another commenter expressed a similar concern and stated that school boards within their district have raised concerns that they cannot afford the additional administrative expense of completing new reports to the Department of Agriculture. An individual commenter argued that the more frequent administrative reviews and two-week menu analysis requirement could double the paperwork for schools participating in the program. An individual commenter noted that State Agencies are currently struggling to maintain the prescribed 5 year review plan and concluded that these State Agencies cannot handle a more frequent cycle as well as analysis of multiple weeks of menus. An advocacy group and a school district noted that adding another week of lunch and two weeks of breakfast menus and production records would exponentially increase the work required and that increased staff costs would be a burden for both school districts and State Agencies.

A food service industry company noted that FNS described a number of administrative impacts on SFAs. This commenter requested a phase-in period of the regulation in order to provide SFAs with clearer cost and participation estimates for implementing these provisions. A professional association stated that many SFAs would need to invest in new computer hardware and software in order to conduct the new food-based menu planning approach. A State department of education argued that all food items would need to be entered into a database and that the annual cost of analyzing menus would triple. This commenter added that states would need to hire more contractors due to the increased number of schools to be reviewed annually, which would put a financial burden on State Agency budgets.

13.5.7 Impact on student participation

Approximately 1,170 submissions discussed the proposed rule's impact on student participation. School districts and school food staff members argued that meals which disregard students' tastes and preferences would result in more packed lunches and a resulting loss of income to districts. Many commenters argued that the numerous proposed changes over a short time frame, combined with the increased pricing structure, would decrease student participation. Another commenter agreed, arguing

that if new food products and food preparations are quickly introduced, their ability to work with and educate students regarding the changes is more difficult. A school district expressed concern that limiting portion size in order to reduce calories, limiting the potatoes to one cup, and increasing meal prices would decrease participation levels. A school food service consulting firm argued that USDA has significantly underestimated the negative impact of menu changes on student participation rates and, by extension, the impact on student nutrition and the financial costs of menu changes to SFAs and industry. A food manufacturer argued that the proposed long-term sodium level reductions could cause a decrease in school meal program participation.

A school district expressed concern that schools would need to gradually increase lunch and breakfast prices for paying students and predicted that with each increase in meal price, participation would drop by at least 10 percent. Several school districts argued that school districts would attempt to cover the gap in reimbursed funding by significantly increasing meal prices to students not enrolled in free or reduced meal programs. These commenters expressed concern that this would result in additional loss of participation from these students and not yield the intended benefit. School food services staff members argued that meal participation would go down because many families in their community are considered “working poor,” but do not qualify for free or reduced meals. These commenters expressed concern that a steady increase in price would make those families resort to sending a less wholesome lunch from home, which they stated benefits neither parent nor child. A school district argued that with the current recovering economy they would see a big decrease in student participation if they had to increase student meal prices. A school food service staff member stated that if they are required to raise their prices to \$2.46 many parents would start having their kids bring food from home. A food service industry company, based on its history with school meal programs, asserted that increasing meal prices and reducing student food choices reduces participation in school meals programs.

Commenters stated that the changes to the proposed revisions could reduce participation by children who pay for the meal and expressed concern that the program could gain a reputation that “the poorest of our students eat” participation but those on the free or reduced program would also decline, as they would not want to be identified as being poor. A food service industry company agreed, commenting that they are concerned that the revised meal standards run the risk of unintentionally identifying free and reduced price recipients if paid students are inclined to opt out and bring a bag lunch from home or to go off campus for foods that research has shown are less nutritious than school meals.

An individual commenter stated that the proposed rule assumes that the changes in dietary requirements would not cause significant levels of schoolchildren to opt-out of the program entirely. This commenter asserted that the only evidence offered for this is that schools have a strong incentive to maintain high participation levels in order to maintain their flow of Federal reimbursement revenue. This commenter argued that this reasoning is flawed and leads to a skewed cost-benefit analysis.

A school district and a school food service staff member argued that the uncertainty surrounding how this regulation would affect student participation supports a recommendation that the changes must be tested before implementing the rule. Food service staff members and other commenters recommended that USDA establish a baseline of school meal participation and monitor student acceptability and participation as the revised meal pattern is implemented. A school food service consulting firm agreed, arguing that the assumption increased revenues from the higher paid meal prices mandated by the equity pricing provision of the Healthy Hunger-Free Kids Act of would offset some or all of the cost increases must be tested and verified before these increased costs are imposed upon SFAs under an expedited timeline. An individual commenter argued that student participation can be improved by altering food preparation methods, limiting a la carte options, and increasing the requirement for starchy vegetables.

13.5.8 Impact on school lunch/breakfast prices

Approximately 480 submissions discussed the proposed rule’s impact on school meal prices. A school district commented that the increase in breakfast costs would be as much as \$0.36 per meal and that for

lunch the increase would be as much as \$0.28 per meal above the current costs. This commenter concluded that the \$.06 per lunch reimbursement rate is far less than the cost increases for either breakfast or lunch. Another school district asserted that the additional cost increases per lunch are estimated at \$.38. A school district commented that the cost of the proposed meal pattern is “steep,” with some estimates stating that school breakfast and lunch prices may increase by 51-56 cents. This commenter stated that it is unrealistic to think State and local governments can afford to support the increased costs imposed by the proposed rule. An individual commenter estimated that based on current food costs, the increase per meal served would be an extra 60 to 70 cents. This commenter expressed concern that there is currently no proposed increase in Federal reimbursement for breakfast, and only a 6 cent increase for lunch, and asserted that already financially taxed school nutrition operations would have to absorb the increased costs.

An individual commenter expressed concern about how much school lunch prices would increase. A school service staff member commented that high school nutrition programs might drop out of the NSLP and run their own program because new regulations cost more money to implement and are difficult to comply with. A school district expressed concern that the increase in cost would also affect adult meal prices at schools, which could reduce the number of teachers dining in the cafeteria. This commenter noted that if a teacher dines in the cafeteria with his/her students, students are more inclined to eat a school meal or be encouraged to eat school meals. Another commenter suggested that the increase in school breakfast and lunch prices as a result of the proposed requirements would not be an issue for most students because the meals will still be relatively cheap and most parents would be willing to pay a little extra to ensure their child is being fed in a nutritious way.

13.5.9 Data sources

Approximately five submissions discussed data sources that were used in the regulation. An individual commenter stated that the proposed rule cites an analysis of 330 Minnesota school districts (Wagner, et al.), and that the study suggests that higher Federal reimbursement rates may be unnecessary. This commenter asserted that this study should be replicated in other parts of the country before being used as an assumption. Some commenters expressed concern that the food cost estimates cited in the proposed rule were based on - food costs. These commenters argued that, based on current food costs the increase per meal served would actually be an extra 60 to 70 cents per meal. An individual commenter argued that some of the proposed standards are based on weak scientific evidence and gave the example that there is limited evidence that limiting flavored milk and regular cheese in children would lower blood pressure and reduce obesity.

13.5.10 Other comments on costs (e.g., school participation, breakfast concerns)

Approximately 510 submissions commented on other potential costs associated with the proposed regulation. School districts, a trade association and other commenters stated that given the increase in food costs because of the regulation they would have no choice but to drop out of the breakfast program. A school district and a food service industry company argued that it is not the time to make school served breakfasts more expensive since most districts are struggling to increase participation in their breakfast programs. A school food service staff member argued that the increased costs due to the proposed rule may shut down innovative practices like breakfast in the classroom. A food bank and an advocacy organization argued that in response to the cost increases schools might eliminate breakfast service, which would increase both hunger and obesity. A school district commented that, without additional resources, districts would be faced with deciding whether they can continue to afford or need to eliminate breakfast and child care feeding services in order to prevent these additional costs from impinging on the district general fund. A State department of public instruction commented that the proposed rule, as written, could force many programs to close their doors leaving socio-economically disadvantaged students with nothing to eat. A company argued that the financial viability of both the breakfast and lunch programs would be compromised by the proposed changes.

A school food service staff member commented that school systems cannot afford to supplement and balance the budget of school nutrition programs and expressed concern that school participation in the NSLP and SBP would drop significantly. This commenter stated that school systems have to decide if they are better off not receiving funding from USDA and serve what they want to meet budget demands. Another commenter asserted that the financial impact to schools would lead to layoffs, increased classroom sizes, and elimination of the NSLP and SBP.

An individual commenter expressed concern that the proposed rule does not have sufficient mechanisms in place to assist public schools in dealing with the increased cost of food, labor and training, and recommended that a short guidebook on possible cost-savings strategies be developed. A school district stated that in order to plan menus with minimum and maximum they would need a computer program for menu analysis, thus adding additional costs to the food service budget.

A school and a State department of public instruction stated that the proposed regulations would have an adverse effect on the industry partners who provide products for the school nutrition programs because the cost of production plant re-fabrication and product reformulation would be tremendous. This commenter was also concerned that the cost may be high enough to drive many in the child nutrition food industry away therefore, driving up the cost of food for schools. A school food service staff member argued that available products for school foodservice programs do not meet new requirements and concluded that it is probable that costs of reformulating these products would increase beyond estimated increases in costs.

A school requested that a unified formula or a cap on indirect cost be developed so that reimbursement stays with the school nutrition budget to improve meal quality. An individual commenter stated that part of the professional standard training should be to teach schools what the direct costs are to their programs and for FNS to develop guidance on how to make sure their program is not “being double dipped” for more of the direct costs than they should be paying.

An individual commenter argued that given the low Federal reimbursement rate, it is imperative that the reimbursement amounts not be allocated uniformly, but rather be based on state and school affordability. A school food service consulting firm argued that the proposed rule does not consider the potential costs involved in rebidding food service management contracts that SFAs presently have in place. This commenter concluded that USDA may need to consider seeking additional comments regarding the implementation and rebidding costs to SAs and SFAs, including reasonable estimates of how quickly SFAs can implement the required changes. A food service staff member requested that USDA define what allowable nonfederal funds are since a la carte revenues are now considered Federal funds.

13.6 Alternatives

13.6.1 Support phase-in implementation of IOM recommendations

Approximately 30 submissions supported a phase-in implementation of the IOM recommendations, one of the alternatives discussed in the RIA. A food service industry company argued that many schools would need a significant phase-in period to purchase or finance, and then install, all the new equipment; hire the additional managers and workers; re-train existing workers; and develop a new way of preparing and providing breakfasts and lunches from scratch. A food manufacturer recommended that instead of implementing immediate “revolutionary changes” to the school lunch and breakfast programs, the changes should be made in a gradual and measured fashion. This commenter argued that a measured approach would have the dual benefits of a potentially greater acceptance rate by students, while making it easier to monitor the changes to determine what changes were successful, and evaluate what changes did not work. A State department of agriculture requested that the proposed regulation be phased in over several years beginning in the elementary schools to ensure that all SFAs have an opportunity to come into compliance gradually, and that State Agencies can provide adequate guidance. A school district requested that there be a three year phase-in of the fruit and vegetable requirements. Many comments

discussed in Section 11.6.3 (“Suggested phase-in/gradual implementation”) above may also be relevant to this RIA alternative.

13.6.2 Support not implementing (or postponing implementation of) IOM recommendations

Approximately 150 submissions supported not implementing, or postponing the implementation of, the IOM recommendations. School districts recommended that implementation of the proposed breakfast meal pattern changes be delayed until funding is available to meet the challenge of providing the changes. Other commenters recommended that the rule be postponed until a funding source can be identified. An individual commenter argued that the proposed rule be delayed until information is available on equipment needs within schools. Other commenters recommended that the rule be postponed until a better economic period. A child nutrition industry consultant argued that if many of the recommended changes by stakeholders are not possible, then USDA should consider adopting this alternative of not implementing or delaying implementation, as discussed in the RIA. Many comments discussed in 11.6.2 (“Oppose proposed implementation date and/or suggest a different date”) above may also be relevant to this RIA alternative.

13.6.3 Other comments on alternatives

Approximately five submissions addressed other alternatives. A school district suggested that alternatives should be considered that depart significantly from IOM recommendations. A trade association stated that the proposed rule diverges on eight critical points outlined in the IOM report. Comments discussed in 3.5 (“Alternatives to revising requirements (e.g., voluntary guidelines)”) above may also be relevant to this issue.

13.7 Other comments on RIA

Approximately 20 submissions contained comments on the RIA that did not fit into the issue categories discussed above. A nutrition professional argued that most schools already do not fully comply with the current nutrition standards and questioned what increased regulatory oversight would accomplish. This commenter was also “disappointed” that information was presented that indicated costs savings for non-compliance.

A school advocacy group recommended eliminating the description of revenue streams and operational changes on pages - of the Federal Register notice of proposed rulemaking and replacing it with an affirmative statement that school districts are/would not be required to further subsidize school meal programs at the expense of academic programs and school operations, and that school eligibility for the performance-based reimbursement increase would not be jeopardized as a result. This commenter and a professional association argued that the scope of the proposed rule had made them anticipate that these regulations are the first in a long series of regulations associated with recent legislation that have financial implications for districts. These commenters urged USDA to issue a cumulative analysis of the financial/operational impact of the Healthy Hunger-Free Kids Act of on school districts, representing the combined impact of the individually issued guidance, implementation memos, Dear Colleague letter, proposed rules, and other policy issued by USDA related to this statute.

A food manufacturer expressed concern that a significant number of food industry jobs (both direct and indirect) would be jeopardized because of the increased costs associated with the proposed rule. An academic commenter argued that USDA should fully consider the broad range of societal costs and benefits identified in Executive Order 6 and identify more ways to support other related governmental objectives as part of its RIA. This commenter recommended a number of action items USDA should take to accomplish this goal. A school food service staff member argued that behavioral economics should be reviewed to evaluate the ultimate impact on the program.

14. Regulatory Flexibility Analysis

14.1 Agree with Regulatory Flexibility Analysis

No submissions expressed this view.

14.2 Disagree with Regulatory Flexibility Analysis

No submissions expressed this view.

14.3 Impact on small SFAs/schools

Approximately 105 submissions addressed the impact of the proposed rule on small SFAs and schools. A school district and a school nutrition consultant asserted that the proposed rule would have a significant impact on a substantial number of small entities and that the additional burdens on them both administratively and financially may result in their inability to continue to participate in the programs. A school food service staff member urged USDA to take into consideration the “special challenges of food distribution, lack of adequate kitchen and food storage equipment and facilities, and small scale faced in small, rural states.” This commenter and another school food service staff member requested that USDA create some way to allow for experimentation and “outside the box” thinking, so that Vermont’s school food service directors can continue to develop creative approaches to making use of local products, combining commodities orders with neighboring states, and expanding access to school meals programs to all students.

A State department of education expressed concern that the proposed NSLP/SBP changes would unintentionally identify free and reduced price recipients if paid students opt out of the meal programs for a la carte services if the revised meal pattern is not acceptable to them. This commenter explained that due to the rural and socioeconomic status of its state, it has worked hard to ensure that nothing is done to overtly identify those students who are receiving free or reduced price meals. This commenter expressed further concern that if students opt out of the school meals programs, they might go off campus and purchase less nutritious foods for lunch, or bring less nutritious lunches from home.

14.3.1 Cost to produce school meals

Approximately 25 submissions addressed the cost to produce school meals for small SFAs and schools. A school food service staff member commented that the increased cost of whole grain flour along with the necessary equipment changes would impact the smaller districts making it hard for them to comply in a timely manner. A school argued that the proposed school lunch regulations would cause the “demise” of small school lunch programs. A school food service staff member stated that small schools cannot afford to lose any more money. Another school food service staff member argued that small schools would find it difficult to financially meet the new nutritional standards because they are unable to leverage the economies of scale of bulk buying. One school food service staff member from a small, rural school commented that her district does not have the budget to buy whole-wheat and low fat choices, nor the budget to make the kitchen fall within state health code to prepare cheaper, healthier meals.

14.3.2 Cost of administering school meals programs

Approximately 10 submissions addressed the cost of administering school meal programs for small SFAs and schools. A food service industry company stated that for a small SFA containing one high school, one middle school, and five elementary schools, training costs would be approximately \$46,000, including costs for trainers, materials, and labor and benefits paid to employees while they are training. A school service staff director from a small urban area was concerned about how this bill would severely limit local control of menu and budget planning. Another commenter expressed concern that school food service staff would need to know the grade of each student as they pick up the breakfast meal and adjust the meal portions or choices accordingly, since many small, rural school districts have one breakfast serving site for all students.

14.3.3 Equipment costs

Approximately four submissions addressed equipment costs for small SFAs and schools. A school food service staff member urged USDA to take into careful consideration the special challenges faced in small,

rural states: food distribution, lack of adequate kitchen, food storage equipment and facilities, and small scale. A school district stated that the serving lines are too small to accommodate a larger variety of food, and that additional coolers, freezers and dry storage space would be required to safely store the additional fruits, vegetables and proteins. This commenter asserted that many schools do not have adequate space to add extra washing facilities to safely wash and process the additional fresh fruits and vegetables. Similarly, one school food service staff member from a small, rural school commented that her kitchen does not have the cooking facilities or storage facilities (i.e., freezer refrigerators) to cook from scratch, which limits them to precooked choices.

14.3.4 Options for addressing increased costs

No submissions addressed this issue.

14.3.5 Other comments on impact on SFAs/schools

Approximately 10 submissions addressed other impacts of the rule on small SFAs and schools. An advocacy organization stated that small schools would find it difficult to meet the new nutritional standards for lunches and breakfasts for the reimbursement rates provided in the Healthy Hunger-Free Kids Act of 2010. This commenter asserted that if the new rule is implemented as proposed, many schools would end their school meals programs. This commenter encouraged USDA to create some way to allow for experimentation and “outside the box” thinking, so that school food service directors can continue to “develop creative approaches to making use of local products, combining commodities orders with neighboring states, and expanding access to school meals programs to all students.” A school district stated being in a small rural county puts them at a disadvantage in securing a variety of locally grown produce. Another commenter requested that USDA revise its recipes to incorporate the use of herbs to enhance flavor and reduce sodium because many small, rural districts do not have access to chefs to revise their recipes, and depend on USDA recipes.

14.4 Impact on small food service management companies (FSMCs)

14.4.1 Increasing SFAs reliance on FSMCs to manage costs

Approximately 155 submissions addressed the increasing SFA reliance on FSMCs to manage costs. Several commenters, including school districts, a State department of education, school food services staff, individual commenters, a school nutrition consultant, and a labor union, were concerned about the statement “FSMCs may find new opportunities to work with SFAs that currently do not contract for food service assistance, a ‘beneficial impact’ of the regulation” because it could be perceived as implying that in-house school lunch programs are not providing healthy meals. One individual commenter believed that this provision would result the perception that self-operating schools cannot be successful. A school district requested that USDA refrain from making what may be misinterpreted as an endorsement for retaining FSMCs. A professional association was concerned that small SFAs would be motivated to consider contracting with FSMCs in an attempt to avoid the perceived burden of meeting the requirements of the new nutrition standards. A school district stated that the provision regarding FMSCs needs to be eliminated because it gives the illusion that schools would benefit more from their expertise, when many self-operating schools provide healthy school meals. A labor union noted a study conducted by one of its projects that indicated that schools that contracted with FSMCs did not perform as well as self-operating schools.

14.4.2 Other comments on impact on FSMCs

No submissions addressed this issue.

14.5 Reasonable alternatives to reduce small entities impacts

14.5.1 Different implementation timetables for small local educational agencies (LEAs)

An individual commenter argued that a phased in implementation based on the size of the LEA should be allowed in order to permit smaller LEAs, with less purchasing power, more time to adapt to the proposed regulation.

14.5.2 Other alternatives to reduce burden on small entities

No submissions addressed this issue.

14.6 Other comments on impacts on small entities

No submissions addressed this issue.

15. Other issues related to the rule

15.1 Other comments on regulatory text (issue not addressed above)

Approximately 140 submissions commented on regulatory text other than that having to do with the issues discussed above. A teachers union supported language in the proposed rule that would permit schools to offer leftover meals to students, but not allow reimbursement for such meals, and encouraged FNS to take a stronger stance on the issue of leftover meals. A nutrition professional commented on the proposed regulatory language for afterschool snacks, 7 CFR 210.10(o), stating that FNS should require afterschool snacks to meet the same requirements as NSLP/SBP, including fat-free or low fat milk only, whole grain-rich products, no trans fats. A trade association opposed the description of foods as “minimally processed” and “highly processed” in the proposed rule, and asserted that these terms do not possess scientific definitions and are subject to individual interpretation. A State department of education pointed out some errors and inconsistencies in the charts in the proposed regulations, and urged that the charts in the final regulations must be correct and the same where ever they are listed. Two advocacy organizations supported the proposed regulatory language (in proposed paragraph 210.10(n)) that stated that FNS encourages schools to inform students, parents, and the public about efforts they are making to meet the school meal requirements. Finally, an individual commenter suggested that FNS revise section 210.10(n) to require schools – as information becomes available – to publish or make available school meal nutrition content.

15.2 Request to extend comment period/issue a supplemental NPRM or interim final rule

Approximately 240 commenters requested more time before FNS finalizes the regulations. Of the commenters that made such requests, the majority of commenters, including a State department of public instruction, a State department of health services, advocacy organizations, industry associations, a municipal government agency, school districts, school food service staff, food manufacturers, food service industry firms, a child nutrition consultant, a law firm, and individual commenters, recommended that FNS promulgate the changes as an interim final rule, with a comment period following implementation. These commenters argued that an interim final rule would allow additional studies as well as the monitoring of the practical consequences and benefits of the revised meal pattern, and would afford an opportunity to make appropriate modifications. A State department of education disagreed with commenters who suggested an interim final rule and stated that this would further prolong the successful adoption of the new guidelines.

Commenters that requested extensions of the comment period, including an industry association, a food manufacturer, a child nutrition consultant, a law firm, and an individual commenter, cited the complexity of the proposed changes and the need to consider the recently issued 2010 DGAs as reasons why additional time was needed. A food service industry firm, suggested that FNS issue a supplemental NPRM.

15.3 Request to hold public meetings

No submissions included this request.

15.4 Suggestions for collaboration

Approximately 350 submissions included suggestions for collaboration. Commenters that addressed this issue generally supported a broad and participatory implementation process with USDA, industry, SFAs and LEAs, and key partners at the community level. Several commenters, including advocacy organizations, professional associations, a school district, a municipal government, school food service staff, a trade association, a food service industry firm, an individual commenter, recommended that USDA collaborate with other Federal agencies such as the U.S. Department of Education, Department of Health and Human Services, Department of Energy, FDA, Department of Defense, Agricultural Marketing Service, and the Centers for Disease Control and Prevention when implementing the rule. Many commenters, including advocacy organizations, school food service staff, a large city school district, a trade association, labor unions, and a nutrition professional, also suggested that USDA actively engage and collaborate with state, local, and municipal agencies, as well as SFAs and school nutrition professionals. A Federal elected official urged USDA to involve local school board members in policy development and implementation of the rule. A trade association urged USDA to support collaboration at the state level for data and resource sharing so schools and districts can share the same information about nutrition and healthy school environments and receive similar tools and resources.

Some commenters, including advocacy organizations, a school district, a trade association, a labor union, a State WIC program, a dietician, and individual commenters, urged FNS to collaborate with various entities on educational initiatives to promote the ideas behind the rule, and to extend FNS's reach and ability to engage stakeholders. The stakeholders, initiatives, and entities suggested by commenters for collaboration on implementation of the rule included food and beverage manufacturers, local stores and restaurants, organizations that represent communities of color, labor unions, registered dietitians, the National Food Service Management Institute, HUSC schools, the Team Nutrition Network, the Supplemental Nutrition Assistance Program (SNAP) Nutrition Education program, Let's Move Campaign, the Know Your Farmer Know Your Food initiative, Alliance for a Healthier Generation, Action for Healthy Kids, Culinary Institute of America, Produce for Better Health Foundation, the Robert Wood Johnson Foundation, the California WIC Program, and the School Nutrition Association.

A few commenters, including school food service staff members, a school district, a policy advocacy organization, and an individual commenter, recommended the formation of multi-stakeholder committees as a means to implement the administration of the new NSLP/SBP. A Federal elected official urged USDA to withdraw the NPRM and work with interested parties to craft a responsible regulation that promotes well-balanced nutritious choices.

15.5 Impact of the changes in the CACFP regulations

No submissions addressed this issue.

15.6 Unfunded Mandates Reform Act

Approximately three submissions addressed the Unfunded Mandates Reform Act analysis in the proposed rule. An advocacy organization disagreed with the Unfunded Mandates Reform Act analysis determination that local districts have the flexibility to maintain fiscal sovereignty. A school food service industry consultant commented that despite FNS's explanation of the proposed rule as being the least costly way forward given the statutory mandate to issue new menu planning regulations, SFAs would bear the burden of the \$7.5 billion shortfall. A school food service consulting firm commented that the proposed rule did not include a variety of associated costs in the cost-benefit analysis (such as the capital improvements) and, therefore, USDA has not met the Unfunded Mandates Reform Act's mandates.

Although there were few comments on the NPRM's Unfunded Mandates Reform Act analysis, many commenters referred to the changes in the proposed rule generally as "unfunded mandates."

15.7 Federalism impacts (e.g., consultation with State/local governments)

Approximately seven submissions discussed federalism impacts. A school dietician suggested that because many of the items in the proposed rule have already been addressed by some states, the Agency can look to state and local programs for guidance on how to successfully implement proposed issues like decreasing trans fat and increasing whole grains. A school food service staff member suggested that the Agency consider implementing the proposed rule according to the foods available in different regions instead of requiring the same foods be served across the country, and commented that the Federal government should leave more decisions regarding what foods to serve in school meals to the states.

15.8 Consultation/coordination with Indian Tribal Governments

One submission commented that populations on Native American Indian reservations do not have the funds to improve the nutrition content of the breakfast program, which the commenter asserted was very important in the community. This commenter urged USDA to make necessary adjustments to keep the breakfast program strong and growing..

15.9 Preemptive effect of rule

Approximately 165 submissions addressed the preemptive effect of the rule, as discussed on page of the proposed rule, per Executive Order 8. The overwhelming majority of commenters that discussed this issue, including a State department of education, food manufacturers, school districts, school food service staff, advocacy organizations, professional associations, food service industry companies, a law firm, nutrition professionals, and individual commenters, expressed the view that states and local agencies operating meal programs should not have permission to set more rigorous requirements, disagreeing with FNS's position in the proposed rule. A food manufacturer asserted that since the NSLP/SBP currently does not prohibit states from imposing more restrictive guidelines, it can state with certainty that from a manufacturing standpoint, this negatively impacts both supply chain and pricing to schools. This commenter stated that those states with standards that are furthest from the national requirements have the fewest options and pay more for the options that are available to them.

A State department of education, advocacy organizations, a trade association, a firm, and an individual commenter expressed the view that state and local agencies should have the right to impose more restrictive meal pattern requirements than USDA regulations. The trade association and the firm recommended that USDA should require that states or local districts demonstrate need, or get a waiver from the Federal meal pattern to be able to impose additional requirements.

15.10 Paperwork Reduction Act

Approximately three submissions expressed concern regarding the added burden the regulation may impart due to increased information collection and reporting requirements. A State department of education commented that the paperwork burden for increasing the number of weeks of lunch and breakfast menu analysis is underestimated.

15.11 Environmental impacts

Approximately four submissions addressed the potential environmental impacts of the proposed rule. An academic commenter expressed its view that because of the close connection between agriculture and the environment, USDA should consider the environmental harms and benefits likely to result from the proposed rule. Specifically, this commenter recommended that USDA address the environmental and health effects of meat production, commodity crops associated with grain-fed meat production, and pesticide-free, seasonal and local crops. Another academic commenter argued that from an environmental perspective, this rule would have a significant impact for local communities in terms of the increased number of cans and boxes and increased food waste SFAs would need to dispose of.

15.12 Additional issues not addressed in the NPRM

Approximately 23,883 submissions addressed issues that are not otherwise noted above.

Adequate Meal Time and Meal Scheduling

Many of these commenters, including school districts, State departments of education, a State department of health, school food service staff, food banks, advocacy organizations, professional associations, a food service industry company, nutrition professionals, a principal, health care professionals, a food manufacturer, a student, and individual commenters, expressed concerns that the larger portion sizes required in the proposed rule would require more time to consume school meals, schools currently do not allow adequate time for students to eat lunch, and that lunch is sometimes served unreasonably early in the day. Several commenters that expressed these concerns requested that FNS require schools to provide adequate time to eat lunch and that lunch be served at a reasonable time. One advocacy organization cited studies that they asserted show that students who have adequate time for meals and reasonable meal times consume more nutrients and have less plate waste. A child nutrition industry consultant recommended FNS conduct studies to examine the impact of time on the consumption of student meals.

Public Outreach and Nutrition Education

Many commenters, including school districts, a municipal public health department, school food service staff, advocacy organizations, a farm entity, individual commenters, and a Federal elected official, noted the importance of schools engaging in public outreach and educating students, parents, and school staff on nutrition and healthy eating in schools. One individual commenter suggested that nutrition education messages could be reinforced by a student-led art competition focused on communication of the components of a balanced meal.

Organic and Local Food Products

Other commenters, including an advocacy organization, individual commenters, and an academic commenter, recommended that FNS require schools to serve some organic food products. An academic commenter and an industry association cited evidence that they claim shows the importance of minimizing young children's exposure to even low levels of chemical pesticides for their developmental health.

Some commenters, including advocacy organizations, school districts, an academic commenter, and individual commenters, urged USDA to either require or encourage schools to source food from local and sustainable agricultural practices. A few individual commenter commenters requested that FNS encourage schools to use gardens, composting, and tie-ups with food banks. Other individual commenters and a large metropolitan school district expressed concern that Farm to School programs have no food recall system, and recommended that FNS require a HACCP standard for local farms.

Food Additives

Several commenters, including advocacy organizations, school food service staff, a health care professional, and individual commenters, recommended that USDA take a stronger stance on additives by either requiring schools or providing incentives to use natural, chemical-, dye-, and preservative-free products in preparing school meals. A few commenters, including a school district, an industry association, and food manufacturers, commented that processed foods have a place in the NSLP, since they are economical and convenient (easily available in the USDA commodity program), and decrease food safety concerns because less raw food is handled.

Six Cent Reimbursement Increase

Many commenters, including school districts, a State department of education, a municipal public health department, advocacy organizations, school food service staff, a professional association, and individual commenters, requested clarification on how schools will receive the additional 6 cent reimbursement

increase provided to help meet the revised meal pattern requirements and nutrition standards. Several commenters, including advocacy organizations, a municipal department of education, a school district, a food manufacturer, a professional organization, and an individual commenter, suggested that FNS develop a simplified process for initial certification to receive the 6 cent reimbursement increase.

A school food service staff member encouraged USDA to incentivize early implementation by providing the additional 6 cent reimbursement to schools who meet the new meal pattern requirement prior to SY 2013-2014. Some commenters, including food banks and advocacy organizations, requested that FNS ensure a fair, thorough, and consistent system of certification to enforce the new standards. A professional association commented that the term “local government” in the proposal was confusing, and requested clarification between responsibilities anticipated for the State education agencies and the LEAs. A State department of education commented that implementing a different reimbursement rate partway through a school year would require expensive reprogramming, and would increase the potential for errors on fiscal reports. Some commenters, including school food service staff, a large metropolitan school district, a health care professional, a farm entity, an advocacy organization, a religious organization, and a student, urged USDA to provide additional funding to states and school districts to support the changes to the NSLP/SBP meal pattern requirements and nutrition standards.

USDA Commodities Programs

Some commenters, including State departments of education, school districts, school food service staff, advocacy organizations, a law firm, a trade association, a professional association, a food manufacturer, a farming entity, a food service industry consultant, and individual commenters, expressed concern with the USDA commodities programs and the availability of products that would help schools meet the new NSLP/SBP meal pattern requirements and nutrition standards. Other commenters, including school districts, school food service staff, a farm entity, and individual commenters, requested that USDA provide commodities to support the SBP. Some commenters, including school districts, school food service staff, advocacy organizations, industry associations, food manufacturers, and a farm entity, expressed concern regarding the timing and availability of USDA commodities, and whether or not commodities compliant with the new requirements would be available in time for the compliance date.

Many commenters, including a State department of education, a State department of agriculture, a municipal public health department, school districts, a principal, school food service staff, advocacy organizations, a food service industry company, a trade association, an academic commenter, individual commenters, and a nutrition professional requested an increase in the commodity allowance for fresh produce, since schools would be required to serve more fruits and vegetables. An academic commenter suggested that USDA require schools to use half of commodity funds for fruits and vegetables. A school district, a food manufacturer, and an individual commenter expressed concern regarding the adverse effect the proposed requirements would have on the food industry companies that provide products to the school nutrition programs. A farming entity commented that the new rule would require USDA to change the way it currently purchases both entitlement and bonus commodities, particularly in relation to fruits.

Other

A school district and an individual commenter asked whether schools could refuse the additional 6 cent reimbursement if they choose to continue with the current meal pattern. A school advocacy organization and a professional association requested that FNS revise the rule to make clear that the proposed meal patterns and standards are voluntary. Similarly, a school district and a school food service staff member asked whether items that are served but not counted towards the requirements, still had to conform to the requirements.

Many commenters, including a health care association, a State department of education, a professional association, school districts, school food service staff, advocacy organizations, food banks, and a food

service industry company, urged USDA to conduct studies to evaluate the impact of the new meal requirements. A State department of education and a school food service staff member commented that USDA should provide an assessment on which innovative foods and food ingredients offer new opportunities, and which innovative foods and ingredients are particularly successful in securing student participation.

A school food service staff member, advocacy organizations, and a food bank commented that FNS should investigate the possibility of providing universal meals. Similarly, a school district commented that FNS should make it possible for more students to eat a free breakfast. A few commenters, including a State department of education, a State department of agriculture, a school district, a food service industry company, and school food service staff, requested that FNS clarify how condiments would be treated under the proposed meal pattern requirements and nutrition standards.

Some commenters, including a school district, an industry association, and an individual commenter, expressed concern that the new standards would impact other Federal nutrition assistance programs. Several commenters, including a school districts, expressed concern that the new meal standards would unintentionally identify free and reduced price recipients if paid students are inclined to opt out for a la carte choices if the revised paid meal plan is not acceptable. An individual commenter and a State department of education requested clarification on how short weeks would be handled under the proposed rule. A school district and school food service staff expressed concern about outside food being brought into schools for parties, clubs, fundraisers, etc., not meeting the nutrition standards of the food served in the NSLP/SBP. A State department of education asked whether this rule applied to Residential Child Care Institutes.

Some commenters, including a school district, food manufacturers, a school nutrition consultant, an individual commenter, and a school food service staff member recommended that USDA modify the CN Labeling program requirements to better align with the new NSLP/SBP rule. A large metropolitan school district recommended elimination of the CN Labeling program. An individual commenter requested that USDA provide guidance and oversight regarding food service management company operations and develop a model contract that may be used if a SFA retains a food service management company.

16. Out of scope

16.1 Comments on the Healthy Hunger-Free Kids Act of

Approximately 275 submissions addressed provisions of the Healthy Hunger-Free Kids Act of ("the Act") that were out of the scope of the proposed rule. A few commenters expressed general support for the Act. The specific sections of the Act that commenters addressed included the following:

- Direct certification for children receiving Medicaid benefits (Section 103). An individual commenter stated that the funding provided for a study in this provision of the Act could be better used elsewhere.
- Review of local policies on meal charges and provision of alternate meals (Section 143). A school food service staff member commented on this provision of the Act.
- Performance based reimbursement rate increases for new meal patterns (Section 201). A school advocacy organization expressed support for this provision of the Act.
- Water (Section 203). Several commenters, including school districts, school food service staff, an academic commenter, and individual commenters, addressed this section of the Act, either requesting clarification on what was required, questioning the requirement as unfunded, or expressing concern that when water is offered with meals students do not take milk.
- Local wellness policy implementation (Section 204). An advocacy organization provided recommendations regarding this provision of the Act.

- Equity in school lunch pricing (Section 205). Numerous commenters, including school districts, school food service staff, an advocacy organization, and individual commenters, expressed concerns about this provision of the Act, including concerns that increasing the prices of paid meals would further reduce participation in the NSLP/SBP. One commenter expressed confusion regarding why the price of paid lunch was being raised so much in one school year.
- Revenue from nonprogram food (Section 206). An advocacy organization and a large metropolitan school district provided recommendations regarding this provision of the Act. An individual commenter expressed support for this provision of the Act.
- Nutrition standards for all foods sold in schools (Section 208). A few commenters, including a school district and an advocacy organization, expressed concerns with this provision of the Act, including that the school lunch program cannot be responsible for enforcing compliance with nutrition standards for food sold outside of the NSLP/SBP. A school advocacy organization expressed support for this provision of the Act.
- Organic food pilot (Section 210). An advocacy organization and an industry association commented on this provision of the Act.
- Procurement and processing of food service products and commodities (Section 242). An advocacy organization provided recommendations regarding this provision of the Act.
- Privacy protection (Section 301). A school district questioned why social security numbers are necessary for free and reduced price applicants.
- Independent review of applications (Section 304). A school district requested clarification regarding the requirements of this provision of the Act.
- Professional standards for school food service (Section 306). A school district requested clarification of the requirements of this provision of the Act and recommended increased funding for training. Another school district questioned that this provision would drive potential candidates and current employees away from the program. An advocacy organization provided recommendations regarding this provision of the Act. Another advocacy organization expressed support for this provision of the Act.
- Indirect costs (Section 307). A few submissions, including school districts, a professional association, and an individual commenter, addressed this section of the Act, which authorizes a study on indirect costs in the school meal programs.
- Training, technical assistance, and food service management institute (Section 406). A school district expressed support for the increased funding for the National Food Service Management Institute.
- Equipment assistance technical correction (Section 443). A school district requested clarification regarding the effects of this provision of the Act.

16.2 Standards for “competitive foods”

Approximately 75 submissions commented on “competitive foods” in schools, e.g., food in vending machines or food items offered a la carte. Several commenters, including school food service staff, a nutrition professional, a school district, a professional association, and individual commenters suggested that FNS should control what kinds of food are sold in schools, not just the cafeteria, and that FNS should expand the nutritional standards to include a la carte items to better ensure that the regulation’s goal can be met. A school district requested clarification on how a la carte items would be affected by the proposed regulations. Nutrition professionals and an individual commenter urged FNS to issue rules for school meals and competitive foods at the same time so that there is standardization throughout the school environment.

A school advocacy organization recommended that FNS include approaches outlined in CDC’s proposed “Health and Sustainability Guidelines for Federal Concessions and Vending Operations” as part of the rule’s implementation efforts. An individual commenter argued that FNS should prohibit schools from selling a la carte foods during lunch that are not included with the free or reduced price lunch. A trade association recommended that any standards set for milk as part of the NSLP/SBP should also be consistent with standards that are set for milk sold as a competitive beverage.

16.3 Requirements for physical activity or local wellness policies

Approximately 125 submissions addressed the level of physical activity in schools or local school wellness policies. Several commenters, including school districts, school food service staff, an advocacy organization, and a food service industry firm, stated that decreased exercise is as much to blame for the increase in childhood obesity as poor nutrition choices. Some commenters, including school food service staff, a school advocacy organization, a food service industry firm, and individual commenters, recommended that the government mandate physical education or physical fitness testing in schools. Other commenters, including school food service staff, a nutrition professional, and an individual commenter, suggested increased funding for school physical education programs.

A school advocacy organization, a school food service staff member, and an individual commenter recommended that USDA should require or encourage schools to institute local wellness policies that contain policies relating to physical activity/education, nutrition education, community involvement, and regulation of food marketing in schools. A school food service staff member suggested that USDA enforce school wellness program requirements. A State department of health recommended that nutrition curricula linked to federally mandated school wellness policies should be available at all levels of education.

16.4 Other out-of-scope comments

Approximately 790 submissions addressed other issues that were out of the scope of the proposed rule. Some of the other out-of-scope issues addressed by commenters were the following:

- An individual commenter discussed mandating the specifics of health education in schools. A school food service staff member recommended that the government increase funding for schools to provide cooking and other life skills classes.
- Some commenters, including a food manufacturer and a municipal public health department, mentioned food marketing and the potential need for restrictions.
- One school district commented that USDA should have the authority to review and monitor compliance of all bids and contracts between local school districts and food service management companies.
- An individual commenter recommended that FNS use environmental standards to require schools to use reusable dishes and silverware.

- A Federal elected official commented on Vermont's pending Child Nutrition waiver request.
- A school food service staff member urged the expansion of the Fresh Fruit and Vegetable Program.
- A school food service staff member recommended applying nutrition standards to food manufacturers and fast food chains.
- A food manufacturer, a food bank, and individual commenters urged the promotion of healthy eating habits outside of school.
- An academic commenter urged USDA to analyze and reconsider the nexus between health and U.S. agricultural practices.
- A food bank commented on the streamlining of eligibility among different assistance programs. A school food service staff member commented on the food stamps program. A State department of health services, a State department of education, and a school district expressed support for increasing the amount of DOD funds for fresh fruit and vegetables.
- A large metropolitan school district provided data on its district population and meal service numbers.
- A school food service staff member recommended that FNS mandate closed campuses so that students could not leave during lunch.
- An individual commenter recommended ending hot lunch programs, and implementing instead cold lunch programs.
- A large metropolitan school district called for an overhaul of the Child Nutrition programs, including switching the administration of the programs from FNS to the Department of Agriculture level or the U.S. Department of Education.